

# KANSAS STATUTES ANNOTATED

## Kansas Food Safety Program

### Chapter 74.--STATE BOARDS, COMMISSIONS AND AUTHORITIES

#### Article 5.--DEPARTMENT OF AGRICULTURE

**74-581. Transfer of powers, duties and functions to department and secretary of agriculture.** Except as otherwise provided by this order, the following powers, duties, and functions of the department of health and environment, the secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment are hereby transferred to and imposed upon the department of agriculture and the secretary of agriculture:

(a) All powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of mobile retail ice cream vendors and food service establishments located in retail food stores;

(b) all powers, duties, and functions under the food service and lodging act, K.S.A. 36-501 et seq., relating to the licensing, inspection, and regulation of food vending machines, food vending machine companies, and food vending machine dealers as those terms are defined in K.S.A. 36-501;

(c) all powers, duties, and functions under K.S.A. 65-688 through K.S.A. 65-689 relating to the licensing, inspection, and regulation of retail food stores and food processing plants; and

(d) all of those powers, duties, and functions under K.S.A. 65-619 through K.S.A. 65-687 that relate to the powers, duties, and functions transferred under paragraphs (a), (b), and (c) above.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 1; Oct. 1.

**74-582. Successors to certain powers and functions of department and secretary of health and environment and director of division of health; application of documentary references; rules and regulations; orders and directives continued in effect until superseded.** (a) The department of agriculture and the secretary of agriculture shall be the successor in every way to the powers, duties, and functions of the department and secretary of health and environment, the division of health of the department of health and environment, the director of the division of health, and the office of laboratory services of the department of health and environment in which the same were vested prior to the effective date of this order and that are transferred pursuant to K.S.A. 2004 Supp. 74-581. Every act performed in the exercise of such transferred powers, duties, and functions by or under the authority of the department or secretary of agriculture shall be deemed to have the same force and effect as if performed by the department or secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services in which such powers, duties, and functions were vested prior to the effective date of this order.

(b) Whenever the department of health and environment, the secretary of health and environment, the division of health, the director of the division of health, or the office of laboratory services or words of like effect, are referred to or designated by a statute, contract, or other document and such reference is in regard to any of the powers, duties, or functions transferred to the department or secretary of agriculture pursuant to this order, such reference or designation shall be deemed to apply to the department of agriculture or the secretary of agriculture.

(c) All rules and regulations, orders, and directives of the secretary of health and environment which relate to the functions transferred by this order and which are in effect on the effective date of this order shall continue to be effective and shall be deemed to be rules and regulations, orders, and directives of the secretary of agriculture until revised, amended, revoked, or nullified pursuant to law.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 2; Oct. 1.

**74-583. Transfer of fund balances and assumption of liability for compensation and salaries by department.**

(a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties, and functions transferred by this order are hereby transferred within the state treasury to the department of agriculture and shall be used only for the purpose for which the appropriation was originally made.

(b) Liability for all accrued compensation or salaries of officers and employees who are transferred to the department of agriculture under this order shall be assumed and paid by the department of agriculture.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 3; Oct. 1.

**74-584. Resolution of conflicts regarding disposition of property, powers, duties, functions, appropriations, personnel and records.** (a) When any conflict arises as to the disposition of any property, power, duty, or function or the unexpended balance of any appropriation as a result of any abolition or transfer made by or under the authority of this order, such conflict shall be resolved by the governor, whose decision shall be final.

(b) The department of agriculture shall succeed to all property, property rights, and records which were used for or pertain to the performance of powers, duties, and functions transferred to the department of agriculture. Any

conflict as to the proper disposition of property, personnel, or records arising under this order shall be determined by the governor, whose decision shall be final.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 4; Oct. 1.

**74-585. Rights preserved in legal actions and proceedings.** (a) No suit, action, or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this order, or by or against any officer of the state in such officer's official capacity or in relation to the discharge of such officer's official duties, shall abate by reason of the governmental reorganization effected under the provisions of this order. The court may allow any such suit, action, or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(b) No criminal action commenced or which could have been commenced by the state shall abate by the taking effect of this order.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 5; Oct. 1.

**74-586. Transfer of officers and employees; rights and benefits preserved.** (a) All officers and employees of the department of health and environment who, immediately prior to the effective date of this order, are engaged in the exercise and performance of the powers, duties, and functions transferred by this order, as well as all officers and employees of the department of health and environment who are determined by the secretary of health and environment and the secretary of agriculture to be engaged in providing administrative, technical, or other support services that are essential to the exercise and performance of the powers, duties, and functions transferred by this order, are hereby transferred to the department of agriculture. All classified employees so transferred shall retain their status as classified employees.

(b) Officers and employees of the department of health and environment transferred by this order shall retain all retirement benefits and leave balances and rights which had accrued or vested prior to the date of transfer. The service of each such officer and employee so transferred shall be deemed to have been continuous. Any subsequent transfers, layoffs, or abolition of classified service positions under the Kansas civil service act shall be made in accordance with the civil service laws and any rules and regulations adopted thereunder. Nothing in this order shall affect the classified status of any transferred person employed by the department of health and environment prior to the date of transfer.

History: Executive Reorganization Order No. 32, L. 2004, ch. 192, § 6; Oct. 1.

**74-587. Food safety programs; authority relating to certain real property transferred to department.** On and after October 1, 2004, the Kansas department of agriculture shall succeed to whatever right, title or interest the department of health and environment has acquired in any real property in this state concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32, and the authority shall hold the same for and in the name of the state of Kansas. On and after October 1, 2004, whenever any statute, contract, deed or other document concerns the power or authority of the department of health and environment or the secretary of the department of health and environment concerning the functions transferred by this act or by 2004 Executive Reorganization Order No. 32 to acquire, hold or dispose of real property or any interest therein, the Kansas department of agriculture shall succeed to such power or authority.

History: L. 2004, ch. 147, § 1; July 1.

**74-588. Same; transfer of employees.** Except as otherwise provided in this act, on October 1, 2004, officers and employees who, immediately prior to such date, were engaged in the performance of powers, duties or functions of the department of health and environment concerning food and food service which are transferred by this act or by 2004 Executive Reorganization Order No. 32, or who become a part of the Kansas department of agriculture, or the powers, duties and functions of which are transferred to the Kansas department of agriculture, and who, in the opinion of the secretary of the Kansas department of agriculture, are necessary to perform the powers, duties and functions of the Kansas department of agriculture, shall be transferred to, and shall become officers and employees of the Kansas department of agriculture.

History: L. 2004, ch. 147, § 2; July 1.

**74-589. Same; conflict resolution.** On and after October 1, 2004, when any conflict arises as to the disposition of any power, function or duty or the unexpended balance of any appropriation as a result of any abolition, transfer, attachment or change made by or under authority of this act, such conflict shall be resolved by the governor, whose decision shall be final.

History: L. 2004, ch. 147, § 3; July 1.

**74-590. Same; disposition of records.** (a) On and after October 1, 2004, the Kansas department of agriculture shall serve as custodian for all agency records as defined by the Kansas open records act, related to those sections of chapter 36, article 5 and chapter 65, article 6, from which authority is transferred from the secretary of health and environment to the secretary of agriculture. The department of health and environment shall continue to serve as custodian as defined by the Kansas open records act for all agency records related to chapter 36, article 5 and

chapter 65, article 6 generated prior to October 1, 2004. A request for records generated prior to October 1, 2004, pursuant to the Kansas open records act may be made to the Kansas department of agriculture and it will be forwarded to the department of health and environment upon receipt.

(b) The department of health and environment will immediately make available to the Kansas department of agriculture upon request any records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of health and environment related to those functions transferred to the secretary of agriculture.

History: L. 2004, ch. 147, § 4; July 1.

**74-591. Same; transfer of funds; creation of food safety fee fund.** (a) The balances of all funds or accounts thereof appropriated or reappropriated for the department of health and environment relating to the powers, duties and functions transferred by this act are hereby transferred within the state treasury to the Kansas department of agriculture and shall be used only for the purpose for which the appropriation was originally made. On and after October 1, 2004, all such balances shall be deposited in the food safety fee fund and may be used to carry out the responsibilities and duties of the division of food safety of the Kansas department of agriculture, as established by this act.

(b) There is hereby created the food safety fee fund. The Kansas department of agriculture shall remit all moneys received by or for it from fees, charges or penalties to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund. All expenditures from the food safety fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person or persons designated by the secretary.

History: L. 2004, ch. 147, § 5; July 1.

**74-592. Same; communication between departments; consistent administration of regulation of food service establishments.** The secretary of agriculture and the secretary of health and environment shall provide for a mechanism for ongoing communication and access between the division of food safety, as established by this act, and the bureau of epidemiology at the department of health and environment. In exercising their respective authorities under K.S.A. 36-501 et seq., and amendments thereto, the secretary of agriculture and the secretary of health and environment shall apply consistent standards, policies, protocols and procedures in the licensing, inspection and regulation of food service establishments, taking into account the relative risk posed by such establishments to public health and food safety.

History: L. 2004, ch. 147, § 7; July 1.

**74-593. Same; creation of division of food safety; organization.** (a) There is hereby established within and as a part of the Kansas department of agriculture, the division of food safety. The secretary of agriculture shall appoint a director of such division and such director shall be in the classified service of the Kansas civil service act.

(b) The secretary of agriculture may organize the division of food safety in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of this act or with the provisions of law, and the secretary may establish policies governing the transaction of business of the division of food safety within the department.

History: L. 2004, ch. 147, § 8; July 1.

**74-594. Same; transferred programs baseline; report to legislature.** (a) The Kansas department of agriculture shall create a statistically based random selection of not less than 1,000 retail food stores which shall be inspected, documented and evaluated as a transferred programs baseline. The department shall include the results of the baseline inspections in the report required on January 31, 2006, in K.S.A. 2004 Supp. 74-595, and amendments thereto.

(b) On February 1, 2005, the Kansas department of agriculture shall report to the legislature the status of the baseline inspection program using 359 randomly selected retail food stores from subsection (a).

History: L. 2004, ch. 147, § 10; July 1.

**74-595. Same; contents of report.** Not later than January 31, 2005, and January 31, 2006, the Kansas department of agriculture shall report to the house and senate committees on agriculture on the status of the transition. Such report shall be prepared in cooperation with the department of health and environment. The report shall include the steps taken to ensure that food safety resources are targeted at identifying, preventing and eliminating those concerns that constitute the greatest

risk to public health and food safety. The report shall also include a description of what steps have been taken to engage stakeholders in the transition and in deciding what actions would tend to improve food safety.

History: L. 2004, ch. 147, § 11; July 1.

**74-596. Same; violations; penalties; misbranded or adulterated food; curative action.** (a) Any person or entity who shall violate any of the provisions of this act and amendments thereto or the rules and regulations adopted, may incur a civil penalty in an amount not more than \$1,000 per violation, and in the case of a continuing violation every day such violation continues may be deemed a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law. Any civil penalty assessed pursuant to this subsection is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

(b) Any person or entity who shall violate any of the provisions of this act and amendments thereto or the rules and regulations adopted, in an intentional and reckless manner shall be guilty of a class A, nonperson misdemeanor.

(c) Any food misbranded or adulterated or containing or suspected of containing any substance or substances injurious to public health or which is offered or exposed for sale in violation of any of the provisions of this act and amendments thereto shall be subject to seizure in place until such time that the final disposition of the food has been determined by sampling and analysis. Within 30 days of seizure in place, upon verification that the suspected food was misbranded, adulterated or contains a substance or substances that may be injurious to public health the secretary of agriculture shall issue an order establishing measures to prevent further contamination or the threat to public health. The opportunity for hearing pursuant to the Kansas administrative procedure act shall be provided upon issuance of the order. The secretary of agriculture may order the destruction of contaminated food if no alternative assures that further contamination of health hazards are averted, and may be imposed in addition to any other penalty established by law. The district courts of the state of Kansas shall have jurisdiction to restrain violations of this act by injunction.

History: L. 2004, ch. 147, § 12; July 1.

**74-597. Same; contracts for county enforcement; inspections; access to premises; search warrants.** The secretary of agriculture is hereby authorized and empowered to contract with the governing body of any county for the enforcement of all or any portion of the rules and regulations established under this act. Any county entering into a contract with the secretary to enforce such rules and regulations shall act as an agent of the secretary in carrying out such duties. Any inspection of any premises by officers, employees or agents of any such county, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary. For the purposes of carrying out the provisions of this act, the secretary of agriculture or the secretary's agent or the county or district attorney or their agents may enter any premises at any reasonable time, in order:

- (a) To have access for the purpose of inspecting any premises, products or equipment subject to this act; or
- (b) to inspect or sample food actually or reported to be adulterated or a threat to public health; or
- (c) to inspect or investigate complaints of violations of this act; or
- (d) to sample products.

Should the secretary of agriculture, the secretary's agent or the county or district attorney or their agents be denied access to any premises where such access was sought for the purposes authorized, the secretary of agriculture or the county or district attorney may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises for such purposes. The court may upon such application, issue the search warrant for the purposes requested.

The enforcement of the criminal provisions of this act shall be the duty of, and shall be implemented by, the county or district attorneys of the various counties or districts. In the event a county or district attorney refuses to act, the attorney general shall so act. The secretary of agriculture is charged with the duty of enforcing all other provisions of this act.

History: L. 2004, ch. 147, § 13; July 1.

**74-598. Same; licenses; denial, suspension or revocation; grounds; hearing; appeal.** (a) The secretary of agriculture may deny, suspend, revoke or modify the provisions of any license issued under this act, if the secretary finds, after notice and hearing, that the applicant or licensee has:

- (1) Been convicted of or pleaded guilty to a violation of this act or any rule and regulation promulgated thereunder;
- (2) failed to comply with any provision or requirement of this act or any rule and regulation adopted thereunder;
- (3) interfered with or prevented the secretary or any authorized representative of the secretary from the performance of that person's job duties regarding any inspection or the administration of the provisions of this act; or
- (4) denied the secretary or any authorized representative of the secretary access to any premises required to be inspected under the provisions of this act.

(b) Before any license shall be suspended, modified, revoked or denied renewal, the secretary shall inform the applicant or licensee of the date and place of hearing upon such proposed revocation, denial or suspension.

(c) The licensee or applicant may appeal from the decision and order, in accordance with provisions of the act for judicial review and civil enforcement of agency actions.

History: L. 2004, ch. 147, § 14; July 1.

**74-599. Same; designation of hearing officer.** Notwithstanding the provisions of K.S.A. 77-514, and amendments thereto, on and after July 1, 2004, with respect to hearings pursuant to K.S.A. 65-6a18 et seq., and amendments

thereto, before the secretary of agriculture in accordance with the Kansas administrative procedure act, a hearing officer from the office of

administrative hearings shall be the presiding officer unless the party requests that the matter, for which a hearing has been scheduled or for which a right to a hearing exists, be heard by a hearing officer appointed by the secretary.

History: L. 2004, ch. 147, § 16; July 1.

## FOOD, DRUG AND COMSETICS ACT

**65-619. Chemicals in meat products; penalty.** The use of sulphites, any preparation containing sulphur dioxide, or any secret preparation the ingredients of which are unknown, in the manufacture or preparation of meat products, and the manufacture, selling, keeping or offering for sale of any meat products containing sulphites, sulphur dioxide, or the ingredients of any secret preparation, is hereby prohibited, and said meat products are hereby declared to be adulterated within the meaning of the provisions of K.S.A. 65-664, and any amendments thereto, and the manufacture, sale, keeping or offering for sale of any such meat product shall subject the offender to the penalties prescribed in K.S.A. 65-659, and any amendments thereto, relating to adulterated foods.

History: L. 1908, ch. 64, § 1; R.S. 1923, 65-619; L. 1957, ch. 340, § 1; June 29.

**65-620. Diseased animals; sale.** Any person or persons who shall kill, sell or trade or exchange, or offer to sell, trade or exchange, for human consumption, any diseased animal or animals, knowing them to be diseased, shall be guilty of a misdemeanor: Provided, That this act shall not apply to animals sold for immediate slaughter under state or federal inspection.

History: L. 1909, ch. 185, § 1; March 26; R.S. 1923, 65-620.

**65-621. Same; purchase.** Any person or persons who shall purchase or get by trade or exchange or in any other way come in possession of any diseased animal or animals, knowing the same to be diseased, for the purpose and with the intent of disposing the same for food, except for immediate slaughter under state or federal inspection, shall be guilty of a misdemeanor.

History: L. 1909, ch. 185, § 2; March 26; R.S. 1923, 65-621.

**65-622. Same; penalty.** Every person found guilty of violating any of the provisions of this act shall be fined in any sum not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

History: L. 1909, ch. 185, § 3; March 26; R.S. 1923, 65-622.

**65-623. Sale of certain cold-storage meats unlawful; penalty.** Every person who shall offer or expose for sale at retail, for human food, at any public market, store, shop, or house, or in or about any street or other public place, any slaughtered domestic or wild fowls, rabbits, squirrels, or other small animals, wild or tame, that have been preserved by refrigeration or cold storage, unless the entrails, crops and other offensive parts are properly drawn and removed, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than fifty dollars nor more than one hundred dollars for each offense.

History: L. 1907, ch. 187, § 1; Feb. 9; R.S. 1923, 65-623.

**65-624. Protection of meat; penalty for violation.** Every dealer in slaughtered fresh meats, fish, fowl or game for human food, at wholesale or retail, at any established place, or as a peddler in the transportation of such food from place to place to customers, shall protect the same from dust, flies and other vermin or substance which may injuriously affect it, by securely covering it while being so transported. Every violation of this provision shall be a misdemeanor punishable by a fine of not less than ten dollars, or by imprisonment in the county jail for not less than ten days.

History: L. 1907, ch. 187, § 2; Feb. 9; R.S. 1923, 65-624.

**65-625. Conditions of places of sale of food and drugs.** Every place occupied or used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food or drug shall be properly lighted, drained, plumbed, ventilated, screened and conducted with strict regard to the influence of such condition upon the health of operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the foods or drugs therein produced.

History: L. 1909, ch. 230, § 1; March 24; R.S. 1923, 65-625.

**65-626. Rules and regulations; penalty for violations.** The secretary of health and environment is hereby authorized and directed to make such sanitary rules and regulations as are necessary in food and drug inspection and to carry out the provisions of this act; and any person or persons or associations violating the provisions of this act, or any rules and regulations adopted under the provisions of this act, shall upon conviction be fined in a sum not exceeding one hundred dollars (\$100).

History: L. 1909, ch. 230, § 2; R.S. 1923, 65-626; L. 1965, ch. 506, § 26; L. 1974, ch. 352, § 95; July 1.

**65-631. Adulteration of turpentine or certain oils.** Hereafter it shall be unlawful to manufacture, mix for sale, sell, offer or expose for sale in this state, under the name of raw linseed oil or flaxseed oil, any substance which is not wholly the product obtained from well-cleaned flaxseed or linseed, and unless the same fulfills the latest requirements of the United States pharmacopoeia, or any so-called boiled linseed oil, or boiled flaxseed oil, unless the same shall have been prepared by incorporating drier with raw linseed oil, as defined above, at a temperature of not less than

225 degrees Fahrenheit, and unless the same contains not less than 96 percent of linseed oil. And for the purpose of this act it shall also be deemed a violation thereof if boiled linseed oil does not conform to the following requirements:

- (1) Its specific gravity at 60 degrees Fahrenheit must be not less than 0.935.
- (2) Its saponification value (Koettstorfer figure) must not be less than 186.
- (3) Its iodine number (Huebl's method) must not be less than 160.
- (4) Its acid value must not exceed 10.
- (5) The volatile matter expelled at 212 degrees Fahrenheit must not exceed one-half of one percent.
- (6) No mineral oil shall be present, and the amount of unsaponifiable matter as determined by standard methods shall not exceed 2.5 percent.
- (7) The film left after flowing the oil over glass and allowing it to drain in a vertical position must dry free from tackiness in not to exceed twenty hours, at a temperature of about 70 degrees Fahrenheit.

It shall be unlawful to manufacture, mix for sale, sell, offer for sale or expose for sale in this state under the name of turpentine or spirits of turpentine or any compound of the word turpentine or under any name or device illustrating or suggesting turpentine, oil of turpentine or spirits of turpentine, any article which is not wholly distilled from rosin, turpentine gum, or scrape from pine trees, and unmixed and unadulterated with oil, benzine or any other foreign substance of any kind whatsoever.

History: L. 1911, ch. 179, § 1; May 22; R.S. 1923, 65-631.

**65-632. Same; branding.** No person, firm or corporation shall sell, expose or offer for sale any turpentine, flaxseed oil or linseed oil, unless it is done under its true name, and each barrel, keg or can of such oil so sold, exposed or offered for sale, has distinctly and durably painted, stamped, stenciled, labeled or marked thereon the true name of such oil in ordinary bold-face capital letters, not less than five lines pica in size, and the name and address of the manufacturer thereof, or that of the jobber or dealer therein: Provided, That if the contents of the package be less than twenty-five gallons, a label may be used printed in type not less than two-line pica in size.

History: L. 1911, ch. 179, § 2; May 22; R.S. 1923, 65-632.

**65-633. Same; penalty for misbranding.** Any person, firm or corporation who shall fail to comply with the requirements of K.S.A. 65-632, or falsely paint, stencil, label or mark, as required by K.S.A. 65-632, said barrels, kegs or cans containing turpentine, flaxseed oil or linseed oil or knowingly permit such false painting, stamping, labeling or marking, or violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction punished with a fine of not less than ten dollars nor more than one hundred dollars or imprisonment not less than ten days nor more than ninety days or both for each offense.

History: L. 1911, ch. 179, § 3; May 22; R.S. 1923, 65-633.

**65-634. Same; spirits of turpentine or linseed oil compounds.** Nothing in this act shall be construed as prohibiting the manufacture or sale of adulterated spirits of turpentine or linseed oil compounds: Provided, If such compounds or adulterations are designed to take the place of raw or boiled linseed oil or turpentine as defined in K.S.A. 65-631, they shall not be manufactured or mixed for sale, sold, offered or exposed for sale under any title or designation conveying the impression, either directly or indirectly, that it is flaxseed oil or linseed oil, and all compounds of linseed oil or flaxseed oil shall, when sold, offered or exposed for sale, under invented proprietary names or titles, bear conspicuously upon the containing vessel in capital letters, not less than five-line pica in size, and the word "compound," or "adulterated," and be labeled so as to state clearly and distinctly the actual proportions of turpentine or linseed oil and other ingredients contained therein, said label to be printed in the English language, in plain legible type in continuous list, with no intervening matter of any kind.

History: L. 1911, ch. 179, § 4; May 22; R.S. 1923, 65-634.

**65-635. Same; powers and duties of inspectors.** The chief food and drug inspector, as well as his inspectors, assistants, experts, analysts, or others appointed by him, shall have full rights of ingress and egress to the premises occupied by parties who manufacture, deal in or compound turpentine, linseed oil or flaxseed oil, and also shall have power and authority to open any tank, barrel, can or other vessel believed to contain such oil, turpentine, or products used in its manufacture, and to inspect the contents thereof, and to take therefrom samples for analysis, and in case any of the samples so taken shall prove on analysis to be adulterated in violation of the provisions of this act, it shall be the duty of the person securing the sample to proceed against the offender as herein provided.

History: L. 1911, ch. 179, § 5; May 22; R.S. 1923, 65-635.

**65-636. Exhibition of title "drugstore," "pharmacy" or "apothecary."** It shall be unlawful for any person, who is not legally licensed as a pharmacist by the state board of pharmacy, or any person, firm or corporation who does not have in continuous employ, at each place of business, a pharmacist licensed by the state board of pharmacy, to take, use or exhibit the title "drugstore," "pharmacy" or "apothecary" or any combination of such titles, or any title or description of like import, or any other term designed to take the place of such title.

History: L. 1925, ch. 205, § 1; L. 1986, ch. 231, § 8; June 1.

**65-637. Same; penalty.** Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25) nor more

than fifty dollars (\$50) for the first offense and not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each succeeding offense.

History: L. 1925, ch. 205, § 2; May 28.

**65-638. Oleomargarine and margarine; definition.** For the purposes of this act, certain manufactured substances, certain extracts and certain mixtures and compounds, including such mixtures and compounds with butter, shall be known and designated as "oleomargarine," or "margarine" namely: All substances heretofore known as oleomargarine, margarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all mixtures and compounds of oleomargarine, or margarine, oleo, oleomargarine oil, butterine, lardine, suine, and neutral; all lard extracts and tallow extracts; and all mixtures and compounds of tallow, beef fat, suet, lard, lard oil, fish oil, fish fat, vegetable oil, annatto, and other coloring matter, intestinal fat, and offal fat if

- (1) made in imitation or semblance of butter, or
- (2) calculated or intended to be sold as butter or for butter, or
- (3) churned, emulsified, or mixed in cream, milk, water, or other liquid, and containing moisture in excess of one percent (1%) and intended to be used for human food.

This section shall not apply to puff pastry shortening not churned or emulsified in milk or cream, and having a melting point of one hundred eighteen (118) degrees Fahrenheit or more, nor to any of the following containing condiments or spices: Salad dressing, mayonnaise dressing, or mayonnaise products.

History: L. 1929, ch. 219, § 1; L. 1968, ch. 284, § 1; July 1.

**65-639. Same; labeling.** It shall be unlawful to sell or offer for sale in the state of Kansas any of the substances herein designated as "oleomargarine" or "margarine" unless such substances are plainly labeled as "oleomargarine" or "margarine."

History: L. 1929, ch. 219, § 2; L. 1968, ch. 284, § 2; July 1.

**65-640. Same; serving at public places; notice; identification.** It shall be unlawful for any person to possess in a form ready for serving oleomargarine or margarine at a public eating place unless a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place and is printed in English upon each bill of fare or menu, if one be used, and in letters not smaller than eight (8) point bold-faced gothic capitals or not smaller than that normally used to designate the serving of other food items, the words "oleomargarine served here" or "margarine served here"; and in case no bill of fare or menu be used the manager or person in charge of such establishment shall cause to be posted upon each of two of the walls of the dining or eating room in a conspicuous position and in letters at least one and one-half (1 1/2) inches in height, a placard containing on the face thereof the words in the English language, "oleomargarine served here" or "margarine served here"; and such person shall keep said placard continuously posted as aforesaid so long as such substitute be kept or used.

No person shall serve oleomargarine or margarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine or (2) each separate serving thereof is triangular in shape.

History: L. 1929, ch. 219, § 3; L. 1955, ch. 287, § 1; L. 1968, ch. 284, § 3; July 1.

**65-641. Same; enforcement of act.** The secretary of health and environment, in connection with inspections of food service and lodging establishments, shall be charged with the enforcement of this act.

History: L. 1929, ch. 219, § 4; L. 1955, ch. 287, § 2; L. 1968, ch. 284, § 4; L. 1975, ch. 314, § 20; July 1.

**65-642. Same; penalty.** Any person, firm or corporation, and any officer, agent, servant or employee of such person, firm or corporation who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment in the county jail for not more than thirty (30) days; and upon subsequent offense be punished by a fine of not less than twenty-five dollars, or imprisonment in the county jail for not less than sixty (60) days.

History: L. 1929, ch. 219, § 5; July 1.

**65-643. Caustic or corrosive substances; definition of terms.** When used in this act, unless the context or subject matter otherwise requires, the following shall be held and construed to mean as follows:

A. The terms "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percentum or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H<sub>2</sub>SO<sub>4</sub>) in a concentration of ten percentum or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO<sub>3</sub>) in a concentration of five percentum or more; (d) carbolic acid (C<sub>6</sub>H<sub>5</sub>CH<sub>3</sub>), otherwise known as phenol, and any preparation containing carbolic acid in a concentration of five percentum or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H<sub>2</sub>C<sub>2</sub>O<sub>4</sub>) in a concentration of ten percentum or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percentum or more; (g) acetic acid or any preparation



containing free or chemically unneutralized acetic acid ( $\text{HC}_2\text{H}_3\text{O}_2$ ) in a concentration of twenty percentum or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percentum or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percentum or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percentum or more; (k) silver nitrate sometimes known as lunar caustic, and any preparation containing silver nitrate ( $\text{AgNO}_3$ ) in a concentration of five percentum or more; and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia ( $\text{NH}_3$ ), including ammonium hydroxide and "Hartshorn" in a concentration of five percentum or more.

B. The term "misbranded parcel, package or container" means a retail parcel, package or container or any dangerous caustic or corrosive substance for household use, not bearing a conspicuous easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller or distributor; (c) the word "poison" running parallel with the main body of reading matter on said label or sticker on a clear, plain background or a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than 24-point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance.

C. The words "person" or "persons" shall be held, understood and construed to mean every person, natural or artificial, and all firms, copartnerships, trust estates, corporations and the principal officers and agents thereof.

History: L. 1927, ch. 247, § 1; June 1.

**65-644. Same; misbranding.** No person shall sell, barter or exchange, or receive, hold, display or offer for sale, barter or exchange, in the state of Kansas, any dangerous caustic or corrosive substance in a misbranded parcel, package or container, said parcel, package or container being designed for household use.

History: L. 1927, ch. 247, § 2; June 1.

**65-645. Same; condemnation and disposition.** Any dangerous caustic or corrosive substance in a misbranded parcel, package or container suitable for household use, that is being sold, bartered or exchanged, or held, displayed or offered for sale, barter or exchange, shall be liable to be proceeded against in any court of competent jurisdiction. If such substance is condemned as misbranded by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the clerk of the district court of the county in which such sale is had, but such substance shall not be sold contrary to the laws of the state: Provided, however, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may order [or] direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in confiscation of intoxicating liquors.

History: L. 1927, ch. 247, § 3; June 1.

**65-646. Same; enforcement of act.** The attorney general and the county attorneys of the respective counties of this state shall enforce the provisions of this act, and they are hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this act as may be submitted to him for that purpose and as may, in his judgment, conform to the requirements of this statute.

History: L. 1927, ch. 247, § 4; June 1.

**65-647. Same; penalty.** Any person violating the provisions of this act shall, upon conviction thereof, be punished by a fine of not more than two hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment in the discretion of the court.

History: L. 1927, ch. 247, § 5; June 1.

**65-648. Same; prosecutions.** The attorney general and the county attorneys of the respective counties of the state to whom there is presented, or who in any way procures satisfactory evidence of any violation of the provisions of this act, shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided.

History: L. 1927, ch. 247, § 6; June 1.

**65-649. Same; sale of household products.** Household products for cleaning and washing purposes subject to this act and labeled in accordance therewith may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesaler or retailer.

History: L. 1927, ch. 247, § 7; June 1.

**65-650. Medicines, drugs and poisons sold through vending machines, requirements; penalties for violations.** (a) Any person, firm or corporation who offers for sale, sells or distributes any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection

or poison through or by means of any vending machine or other mechanical device, or who uses any vending machine in or for the sale or distribution of any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison, shall be guilty of a class C nonperson misdemeanor and upon conviction shall be fined not less than \$25 nor more than \$500.

(b) No nonprescription drugs shall be offered for sale or sold through a vending machine in anything other than the manufacturer's original tamper-evident and expiration-dated packet. No more than 12 different nonprescription drugs products shall be offered for sale or sold through any one vending machine. Any vending machine in which nonprescription drugs are offered for sale or sold shall be located so that the drugs stored in such vending machine are stored in accordance with drug manufacturer's requirements. Drugs offered for sale or sold in such vending machine shall not be older than the manufacturer's expiration date. Each vending machine through which nonprescription drugs are offered for sale or sold shall have an obvious and legible statement on the machine that identifies the owner of the machine, a toll-free telephone number at which the consumer may contact the owner of the machine, a statement advising the consumer to check the expiration date of the product before using the product and the telephone number of the state board of pharmacy. As used in this subsection, "nonprescription drug" does not include any prescription medicine, prescription-only drug, drug which contains ephedrine alkaloids, drug intended for human use by hypodermic injection or poison. A violation of this subsection is a class C nonperson misdemeanor and upon conviction the violator shall be fined not less than \$25 nor more than \$500.

History: L. 1933, ch. 177, § 1; L. 2000, ch. 40, § 1; July 1.

**65-651. Distinctive coloring of certain poisonous substances; purpose.** It shall be unlawful for any person, firm or corporation to sell, expose for sale or offer for sale any sodium fluoride, sodium silico-fluoride, lead arsenate, calcium arsenate, or any other poisonous insecticide, fungicide or rodent poison unless said poison has been distinctly colored in such a manner as to make it easily distinguished from food products such as flour, soda, baking powder, cream of tartar, etc.

History: L. 1945, ch. 255, § 1; June 28.

**65-652. Same; enforcement; destruction or sale; disposition of proceeds of sale.** Any poison such as described in K.S.A. 65-651 which is not distinctly colored as required by this act when offered or exposed for sale, or sold, or located upon the premises of any establishment handling foods, shall be liable to be proceeded against in any court of competent jurisdiction. If such poison is condemned by said court as not being distinctly colored, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the same shall be distinctly colored in accordance with the provisions of this act, and the proceeds, less the actual cost and charges, shall be paid over to the clerk of the district court in the county in which such sale is had, and the clerk of such court shall pay the same to the county treasurer. Such condemnation proceedings shall conform as near as may be to proceedings in confiscation of intoxicating liquors.

History: L. 1945, ch. 255, § 2; L. 1973, ch. 106, § 17; June 1.

**65-653. Same; enforcement of act.** It shall be the duty of the secretary of health and environment through the food and drug inspectors of the department of health and environment to enforce the provisions of this act.

History: L. 1945, ch. 255, § 3; L. 1974, ch. 352, § 96; L. 1975, ch. 312, § 8; July 1.

**65-654. Same; penalties.** Any person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than three hundred dollars or imprisonment for a period of not more than sixty days, or both such fine and imprisonment at the discretion of the court.

History: L. 1945, ch. 255, § 4; June 28.

**65-655. Food, drug and cosmetic act; title.** This act may be cited as the Kansas food, drug and cosmetic act.

History: L. 1953, ch. 286, § 1; June 30.

**65-656. Same; definitions.** For the purpose of this act: (a) The term "secretary" means the secretary of health and environment.

(b) The term "person" includes individual, partnership, corporation, and association.

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(d) The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts or accessories. The term "drug" shall not include amygdalin (laetrile).

(e) The term "device," except when used in paragraph (k) of this section and in K.S.A. 65-657 (j), 65-665 (f), 65-669 (c) and (o), and 65-671 (c) means instruments, apparatus and contrivances, including their components, parts

and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals.

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness, or altering the appearance; and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

(g) The term "official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them.

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this act that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.

(i) The term "immediate container" does not include package liners.

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article.

(k) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combinations thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or materials with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(l) The term "advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(m) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions. The term "new drug" shall not include amygdalin (laetrile).

(o) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(p) The provisions of this act regarding the selling of food, drug, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such articles for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" within the meaning of the agricultural chemicals act, K.S.A. 2-2202 as now enacted or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(r) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(s) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include: (1) A pesticide chemical in or on a raw agricultural commodity; or (2) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (3) a color additive; or (4) any substance used in accordance with a sanction or approval granted prior to the enactment of the food additive amendment of 1958, pursuant to the federal act.

(t) (1) The term "color additive" means a material which -- (A) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source, or (B) when added or applied to a food, drug, or

cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with another substance) of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act. (2) The term "color" includes black, white and intermediate grays. (3) Nothing in clause (1) (t) shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(u) The term "imitation" shall mean any article made in the semblance of another, consisting of similar or dissimilar ingredients and being capable of being substituted for the imitated article without the knowledge of the consumer.

(v) The term "federal act" means the federal food, drug and cosmetic act (title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

History: L. 1953, ch. 286, § 2; L. 1965, ch. 377, § 1; L. 1967, ch. 338, § 1; L. 1974, ch. 352, § 97; L. 1978, ch. 239, § 13; July 1.

**65-657. Same; unlawful acts.** The following acts and the causing thereof within the state of Kansas are hereby prohibited:

(a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(b) The adulteration or misbranding of any food, drug, device, or cosmetic.

(c) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.

(d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of K.S.A. 65-666.

(e) The dissemination of any false advertisement.

(f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by K.S.A. 65-674.

(g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the United States from whom he received in good faith the food, drug, device, or cosmetic.

(h) The removal or disposal of a detained or embargoed article in violation of K.S.A. 65-660.

(i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded.

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized, or required by regulations promulgated under the provisions of this act.

(k) The using of any person to his own advantage, or revealing, other than to the administrator or officers or employees of the department of health and environment or to the courts where relevant in any jurisdictional proceeding under this act, any information acquired under authority of this act concerning any method or process which, as a trade secret is entitled to protection.

(l) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under K.S.A. 65-669a, as amended, or that such drug complies with the provisions of such section.

(m) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(n) (1) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or (2) selling, dispensing, disposing of or causing to be sold, dispensed or disposed of or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (1) hereof; or (3) making, selling, disposing of or causing to be made, sold or disposed of or keeping in possession, control or custody, or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device or container thereof.

(o) Dispensing or causing to be dispensed a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the person ordering or prescribing.

History: L. 1953, ch. 286, § 3; L. 1965, ch. 377, § 2; L. 1974, ch. 352, § 98; July 1.

**65-658. Same; injunction to restrain violation of 65-657.** In addition to the remedies hereinafter provided the secretary of health and environment is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining, any person

from violating any provision of K.S.A. 65-657, as amended; irrespective of whether or not there exists an adequate remedy at law.

History: L. 1953, ch. 286, § 4; L. 1974, ch. 352, § 99; July 1.

**65-659. Same; penalties for violations of 65-657.** (a) Any person who violates any of the provisions of K.S.A. 65-657, as amended, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than sixty (60) days or a fine of not more than three hundred dollars (\$300), or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than six (6) months, or a fine of not more than one thousand dollars (\$1,000), or both such imprisonment and fine.

(b) No person shall be subject to the penalties of subsection (a) or (c) if he establishes a guaranty of undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this act, designating this act.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the secretary to furnish the secretary the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement.

History: L. 1953, ch. 286, § 5; L. 1974, ch. 352, § 100; July 1.

**65-660. Same; adulterated or misbranded food, drug, device or cosmetic; detaining or embargoing; condemnation proceedings; consolidation, when; samples and analyses of seized articles; destruction of certain perishable food.** (a) Whenever a duly authorized agent of the secretary finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded, he shall petition the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, That when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the secretary. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the secretary that the article is no longer in violation of this act, and that the expenses of such supervision have been paid: Provided further, That no action shall be instituted under this act for any alleged misbranding if there is pending in any court, state or federal, a proceeding under this act based upon the same alleged misbranding, and not more than one such proceeding shall be instituted if no such proceeding is so pending, except that such limitations shall not apply (1) when such misbranding has been the basis of a prior judgment in favor of the state of Kansas or the United States, in a criminal, injunction, or condemnation proceeding under this act, or (2) when the administrator has probable cause to believe from facts found without hearing by him or any officer or employee of the agency that the misbranded article is dangerous to health, or that the labeling of the misbranded article is fraudulent, or would be in a material respect misleading to the injury or damage of the purchaser or consumer. In any case where the number of proceedings is limited as above provided, the proceeding pending or instituted shall, on application of the claimant seasonably made, be removed for trial to any district court agreed upon by stipulation between the parties, or in case of failure to so stipulate within a reasonable time, the claimant may apply to the court of the district in which the seizure has been made, and such court after giving the county attorney reasonable notice and opportunity to be heard shall by order, unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, to which the case shall be removed for trial. Upon demand of either party any issue of fact joined in any such case shall be tried by jury: Provided further, When proceedings under this section involving the same claimant and the same issues of adulteration or misbranding are pending in two or more jurisdictions, such pending proceedings upon application of the claimant seasonably made to the court of one jurisdiction, shall be consolidated for trial by order of such court and tried in (1) any district selected by the claimant where one such proceeding is pending, or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time the claimant may

apply to the court of one such jurisdiction and such court, after giving reasonable notice to the county attorney and opportunity to be heard, shall by order unless good cause to the contrary is shown, specify a district in which claimant's principal place of business is located, in which all such pending proceedings shall be consolidated for trial and tried. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the case covered thereby: Provided further, The court at any time after seizure up to a reasonable time before trial, shall by order allow any party to a condemnation proceeding, his attorney or agent to obtain a representative sample of the article seized and as regards fresh fruits or fresh vegetables, a true copy of the analyses on which the proceeding is based and the identifying marks or numbers, if any of the packages from which the samples analyzed were obtained.

(d) Whenever the secretary or any of his authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the secretary, or his authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

History: L. 1953, ch. 286, § 6; L. 1974, ch. 352, § 101; July 1.

**65-661. Same; proceedings instituted by county attorney.** It shall be the duty of each county attorney to whom the secretary reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: L. 1953, ch. 286, § 7; L. 1974, ch. 352, § 102; July 1.

**65-662. Same; minor violations; notice or warning.** Nothing in this act shall be construed as requiring the secretary to report for the institution of proceedings under this act, minor violations of this act, whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: L. 1953, ch. 286, § 8; L. 1974, ch. 352, § 103; July 1.

**65-663. Same; regulations prescribing definitions and standards of identity for food.** Whenever in the judgment of the secretary such action will promote honesty and fair dealing in the interest of consumers, the secretary shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the secretary shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

History: L. 1953, ch. 286, § 9; L. 1974, ch. 352, § 104; July 1.

**65-664. Same; food deemed adulterated, when.** A food shall be deemed to be adulterated:

(a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of the substance in such food does not ordinarily render it injurious to health; or (2)(A) it bears or contains any added poisonous or added deleterious substance, other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive, which is unsafe within the meaning of K.S.A. 65-667; or (B) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of K.S.A. 65-667; or (C) it is or it bears or contains any food additive which is unsafe within the meaning of K.S.A. 65-667. Where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under K.S.A. 65-667 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of K.S.A. 65-667 and clause (C) of this subsection, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or (3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or is otherwise unfit for food; or (4) it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) any substance has been substituted wholly or in part therefor; or (3) damage or inferiority has been concealed in any manner; or (4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is. This subsection does not apply to any cured or smoked pork product by reason of its containing added water.

(c) If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 4/10 of 1%, harmless natural wax not in excess

of 4/10 of 1%, harmless natural gum, and pectin. This subsection does not apply to any confectionery by reason of its containing less than 1/2 of 1% by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(d) If it is or bears or contains any color additive which is unsafe within the meaning of K.S.A. 65-667.

History: L. 1953, ch. 286, § 10; L. 1965, ch. 377, § 3; L. 1981, ch. 242, § 1; July 1.

**65-665. Same; food deemed misbranded, when.** A food shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.

(d) If its container is so made, formed, or filled as to be misleading.

(e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary of health and environment.

(f) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by K.S.A. 65-663, as amended, unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.

(h) If it purports to be or is represented as (1) a food for which a standard of quality has been prescribed by regulations as provided in K.S.A. 65-663, as amended, and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) a food for which a standard or standards of fill of container has been prescribed by regulations as provided by K.S.A. 65-663, as amended, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each: Provided, That to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the secretary.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the secretary determines to be, and by regulations prescribes, as necessary, in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservatives unless it bears labeling stating that fact: Provided, That to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the secretary.

(l) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

History: L. 1953, ch. 286, § 11; L. 1974, ch. 352, § 105; July 1.

**65-666. Permits for certain classes of food; regulations governing conditions of issuance; suspension and reinstatement, when; access of facilities for inspection.** (a) Whenever the secretary finds after investigation that

the distribution in Kansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health. After the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the secretary as provided by such regulations.

(b) The secretary is authorized to use emergency adjudicative proceedings to suspend any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the secretary shall, immediately after prompt hearing in accordance with the provisions of the Kansas administrative procedure act and

an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

(c) Any officer or employee duly designated by the secretary shall have access to any factory or establishment, the operator of which holds a permit from the secretary for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: L. 1953, ch. 286, § 12; L. 1974, ch. 352, § 106; L. 1988, ch. 356, § 186; July 1, 1989.

**65-667. Same; limiting quantities of certain substances added to foods; regulations governing.** (a) Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive, shall, with respect to any particular use or intended use be deemed unsafe for the purpose of application of clause (2) (A) of K.S.A. 65-664 (a) with respect to any food, K.S.A. 65-668 (a) with respect to any drug or device, or K.S.A. 65-670 (a) with respect to any cosmetic, unless there is in effect a regulation pursuant to subsection (b) of this section limiting the quantity of such substance, and the use or intended use of such substance, conform to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulation, be considered adulterated within the meaning of clause (1), of subsection (a) of K.S.A. 65-664, subsection (a) of K.S.A. 65-668 or subsection (a) of K.S.A. 65-670.

(b) The secretary, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations whether or not in accordance with regulations promulgated under the federal act prescribing therein tolerances for any added poisonous or deleterious substances, for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including, but not limited to, zero tolerances, and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities, and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be solely for investigational or experimental purposes, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, and it shall be incumbent upon such petitioner to establish by data submitted to the secretary that a necessity exists for such regulation, and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the secretary to determine whether such regulations should be promulgated, the secretary may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request. In adopting, amending or repealing regulations relating to such substances, the secretary shall consider among other relevant factors, the following which the petitioner, if any, shall furnish:

(1) The name and all pertinent information concerning such substance including where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect.

(2) The probable composition of, or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance.

(3) The probable consumption of such substance in the diet of man and animals taking into account many chemically or pharmacologically related substance in such diet.

(4) Safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data.

(5) The availability of any needed practicable methods of analysis for determining the identity and quantity of (i) such substance in or on an article, (ii) any substance formed in or on such article because of the use of such substance, and (iii) the pure substance and all intermediates and impurities.

(6) Facts supporting a contention that the proposed use of such substance will serve a useful purpose.

(c) In adopting regulations under subsection (b) of this section, the secretary is authorized to adopt by reference those lists pertaining to or reflecting the same judgments which have been promulgated as regulations under the federal act and have been published in the federal register, if the regulations adopted by reference are in effect on the date adopted, and regulations so adopted shall remain the regulations of the secretary until changed by the secretary. In so doing, the secretary additionally may add to or delete from such lists, whenever in his judgment the statutory guidelines of this section so require.

History: L. 1953, ch. 286, § 13; L. 1965, ch. 377, § 4; L. 1974, ch. 352, § 107; July 1.

**65-668. Same; drugs or devices deemed adulterated, when.** A drug or device shall be deemed to be adulterated:

(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) (A) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this act as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if (A) it is a drug and it



bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of K.S.A. 65-667, or (B) it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of K.S.A. 65-667.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in any official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia.

(c) If it is not subject to the provisions of paragraph (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.

(d) If it is a drug and any substance has been (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor.

History: L. 1953, ch. 286, § 14; L. 1965, ch. 377, § 5; July 1.

**65-669. Same; drugs or devices deemed misbranded, when.** A drug or device shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing: (1) the name and place of business of the manufacturer, the packer or the distributor, except that in the case of a prescription drug it shall bear the name and place of business of the person responsible for the production of the finished dosage form of the drug, the packer and the distributor; except that nothing in clause (1) of this paragraph shall be construed to apply to wholesalers and the requirement of clause (1) shall be satisfied by stating such information on the label of the drug and filing a statement with such information with the secretary which shall be made available by the secretary on request to local, public and private health agencies, poison control centers, licentiates of the healing arts, the state board of pharmacy, consumers and others to promote the purposes of this act; in no event, however, shall the label contain less information than required under federal law; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, except that under clause (2) of this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be allowed, in accordance with regulations prescribed by the secretary, or issued under the federal act.

(c) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under this act, or by regulations issued pursuant to 21 U.S.C. 352 (d), designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "warning-may be habit forming."

(e) (1) If it is a drug, unless its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula), (i) the established name (as defined in subparagraph (2)) of the drug, if such there be; and (ii) in case it is fabricated from two or more ingredients, the established name of each active ingredient, including the kind and quantity of proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein. The requirements for stating the quantity of the active ingredients, other than the quantity of those specifically named in this paragraph, shall apply only to prescription drugs. To the extent that compliance with the requirements of clause (ii) of this subparagraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary, or under the federal act.

(2) As used in this paragraph (e), the term "established name," with respect to a drug or ingredient thereof, means (A) the applicable official name designated pursuant to 21 U.S.C. 358, or (B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium or (C) if neither clause (A) nor clause (B) of this subparagraph applies, then the common or usual name, if any, of such drug or of such ingredient. Where clause (B) of this subparagraph applies to an article recognized in the United States pharmacopoeia and in the homeopathic pharmacopoeia under different official titles, the official title

used in the United States pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the homeopathic pharmacopoeia shall apply.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. Where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements. Articles exempted under regulations issued under 21 U.S.C. 352 (f) may also be exempt.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. The method of packing may be modified with the consent of the secretary, or if consent is obtained under the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to the packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. In the event of inconsistency between the requirements of this paragraph and those of paragraph (e) as to the name by which the drug or its ingredients shall be designated, the requirements of paragraph (e) shall prevail.

(h) If it has been found by the secretary or under the federal act to be a drug liable to deterioration, unless it is packed in such form and manner, and its label bears a statement of such precautions, as the regulations adopted by the secretary require as necessary for the protection of public health. No such regulations shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency of duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless (1) it is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. 356, and (2) such certificate or release is in effect with respect to such drug.

(l) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless (1) it is from a batch with respect to which a certificate or release has been issued pursuant to 21 U.S.C. 357, and (2) such certificate or release is in effect with respect to such drug. This paragraph shall not apply to any drug or class of drugs exempted by regulations promulgated under 21 U.S.C. 357 (c) or (d). For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(m) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of K.S.A. 65-667 or of the federal act.

(n) In the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of (1) the established name, as defined in subsection (e) (2) of this section, (2) the formula showing quantitatively each ingredient of such drug to the extent required for labels under 21 U.S.C. 352 (e), and (3) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.

(o) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(p) Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this act if such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with regulations issued by the secretary or under the federal act.

(q) A drug intended for use by man which (A) is a habit-forming drug to which K.S.A. 65-668 applies; or (B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or (C) is limited by an approved application under 21 U.S.C. 355 or K.S.A. 65-669a to use under the professional supervision of a practitioner licensed by law to administer such drug, shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug or upon the written prescription of a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto, or (ii) upon an oral prescription of such practitioner or mid-level practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling, any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of

dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in a drug being misbranded while held for sale.

(r) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug or by filling or refilling a written or oral prescription of a mid-level practitioner as defined in subsection (ii) of K.S.A. 65-1626 and amendments thereto shall be exempt from the requirements of this section, except subsections (a), (i) (2) and (3), (k), and (l), and the packaging requirements of subsections (g) and (h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of paragraph (q) of this section.

(s) The secretary may, by regulation, remove drugs subject to subsection (d) of this section and K.S.A. 65-669a from the requirements of paragraph (q) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the secretary, be removed from the requirements of paragraph (q) of this section.

(t) A drug which is subject to paragraph (q) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "caution: federal law prohibits dispensing without prescription," or "caution: state law prohibits dispensing without prescription." A drug to which paragraph (q) of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(u) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

History: L. 1953, ch. 286, § 15; L. 1965, ch. 377, § 6; L. 1972, ch. 230, § 1; L. 1974, ch. 352, § 108; L. 1977, ch. 215, § 1; L. 1999, ch. 115, § 8; Apr. 1, 2000.

**65-670. Same; cosmetic deemed adulterated, when.** A cosmetic shall be deemed to be adulterated:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual: Provided, That this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution-this product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this paragraph and the paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

History: L. 1953, ch. 286, § 16; June 30.

**65-671. Same; cosmetic deemed misbranded, when.** A cosmetic shall be deemed to be misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the secretary.

(c) If any word, statement or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

History: L. 1953, ch. 286, § 17; L. 1974, ch. 352, § 110; July 1.

**65-672. Same; advertisements of food, drugs, devices or cosmetics deemed false, when.** (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles,

cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to a physician, dentist or veterinarian, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, That whenever the secretary determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the secretary shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such condition and restriction as the secretary may deem necessary in the interests of public health: Provided, That this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: L. 1953, ch. 286, § 18; L. 1974, ch. 352, § 111; July 1.

**65-673. Rules and regulations; authority of secretary; hearings.** (a) The authority to promulgate rules and regulations for the efficient enforcement of this act is hereby vested in the secretary. The secretary is hereby authorized to make the regulations promulgated under this act conform, insofar as practicable, with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the secretary or by a hearing officer designated by the secretary for this purpose. The secretary shall prescribe by rule and regulation the procedure for conducting hearings. The hearing officer shall have the same powers in conducting a hearing as the secretary. In conducting a hearing the secretary or the hearing officer may issue subpoenas to compel the attendance of witnesses, administer oaths, take testimony, require the production of books, papers, records, correspondence or other documents which the secretary or the hearing officer deems relevant and render decisions. In case of the refusal of any person to comply with any subpoena issued under this section or to testify with respect to any matter which the person may be lawfully questioned, the district court of any county on application of the secretary may issue an order requiring such person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt thereof. Notwithstanding the foregoing provisions of this subsection, hearings on an order, as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(c) Before promulgating any rules and regulations contemplated by K.S.A. 65-663, 65-665, 65-666, 65-669, or 65-672, and amendments thereto, the secretary shall give appropriate notice of the proposal and of the time and place for a hearing as provided in this act. Such rules and regulations may be amended or revoked in the same manner as is provided by law for adoption.

History: L. 1953, ch. 286, § 19; L. 1965, ch. 506, § 27; L. 1974, ch. 352, § 112; L. 1982, ch. 258, § 5; L. 1988, ch. 356, § 188; July 1, 1989.

**65-674. Same; free access to establishments and vehicles for inspections and samples.** The secretary or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) Of inspecting such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the secretary to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated.

History: L. 1953, ch. 286, § 20; L. 1974, ch. 352, § 113; July 1.

**65-675. Same; reports and dissemination of information.** (a) The secretary may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The secretary may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the secretary deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in the section shall be construed to prohibit the secretary from collecting, reporting and illustrating the results of the investigations of the secretary.

History: L. 1953, ch. 286, § 21; L. 1974, ch. 352, § 114; July 1.

**65-676. Same; enforcement of act.** The enforcement of the provisions of this act and all acts ancillary hereto shall be the duty of the division of health of the department of health and environment. The secretary is hereby authorized to appoint the necessary personnel to properly administer this act.

History: L. 1953, ch. 286, § 22; L. 1974, ch. 352, § 115; July 1.

**65-677. Same; examinations by office of laboratory services and at state educational institutions; expenses.** The examinations of foods, drugs, devices and cosmetics required for the proper enforcement of this act may be

made by the office of laboratory services or by specialists and experts in the various fields of science at the state educational institutions, and the secretary shall pay the actual and necessary expenses of such specialists and experts.

History: L. 1953, ch. 286, § 23; L. 1974, ch. 352, § 116; L. 1975, ch. 312, § 9; July 1.

**65-678. Same; cooperation with federal food and drug administration.** The secretary is hereby authorized to confer and cooperate with the federal food and drug administration in the enforcement of the national food, drug and cosmetic act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories or foreign countries.

History: L. 1953, ch. 286, § 24; L. 1974, ch. 352, § 117; July 1.

**65-679. Same; act not to limit authority established under certain other acts.** Nothing in this act shall be construed as limiting or abridging the authority of the secretary of agriculture established under the Kansas dairy law, K.S.A. 65-771 through 65-791, and amendments thereto; or the Kansas commercial feeding stuffs law, K.S.A. 2-1001 through 2-1013, and amendments thereto.

History: L. 1953, ch. 286, § 25; L. 1974, ch. 352, § 118; L. 2001, ch. 32, § 23; L. 2002, ch. 25, § 1; July 1.

**65-679a. Dimethyl sulfoxide; labeling and information requirements if sold other than by prescription.** (a) Any dimethyl sulfoxide (DMSO) sold in this state other than by prescription shall be labeled by the manufacturer and seller. The label shall contain a description of all of the contents in the solution, a statement of purity, the percent of dimethyl sulfoxide (DMSO) in the solution and the manufacturer's name and address. Whenever dimethyl sulfoxide (DMSO) is sold or otherwise supplied, the seller or supplier shall give additional printed material, approved by the secretary, to the person receiving the dimethyl sulfoxide (DMSO) that provides adequate warning against use that may be dangerous to the health of the user.

(b) The secretary of health and environment may adopt rules and regulations necessary to administer the provisions of this section.

(c) This section shall be part of and supplemental to the Kansas food, drug and cosmetic act.

History: L. 1982, ch. 255, § 1; July 1.

**65-680. Same; invalidity of part.** If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and applicability thereof to other persons and circumstances shall not be affected thereby.

History: L. 1953, ch. 286, § 26; June 30.

**65-681. Unlawful labeling of a product as honey or imitation honey; "person" defined.** It shall be unlawful for any person to package any product and label the product as "honey" or "imitation honey" or to use the word honey in any prominent location on the label of such product or to sell or offer for sale any product which is labeled "honey" or "imitation honey" or which contains a label with the word "honey" prominently displayed thereon, unless such product is pure honey manufactured by honeybees.

As used in this act "person" shall mean and include individuals, corporations, associations, receivers, and trustees.

History: L. 1974, ch. 1, § 1; July 1.

**65-682. Same; penalty.** Any person violating or failing to comply with any of the provisions of this act shall be deemed guilty of a class C misdemeanor.

History: L. 1974, ch. 1, § 2; July 1.

**65-683. Same; administration and enforcement.** The secretary of health and environment shall be charged with the administration and enforcement of the provisions of this act.

History: L. 1974, ch. 1, § 3; L. 1975, ch. 462, § 73; July 1.

**65-684. Same; injunction.** In addition to the penalties provided in K.S.A. 65-682 the secretary of health and environment is hereby authorized to apply to the district court for, and such court shall have jurisdiction, upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of K.S.A. 65-681.

History: L. 1974, ch. 1, § 4; L. 1975, ch. 462, § 74; July 1.

**65-685. Same; duty of county or district attorney.** It shall be the duty of each county or district attorney to whom the secretary of health and environment reports any violation of this act, to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: L. 1974, ch. 1, § 5; L. 1975, ch. 462, § 75; July 1.

**65-686. Same; minor violations of act; notice.** Nothing in this act shall be construed as requiring the secretary of health and environment to report for the institution of proceedings under this act, minor violations of this act,

whenever the secretary believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: L. 1974, ch. 1, § 6; L. 1975, ch. 462, § 76; July 1.

**65-687. Limitation on liability of donor for donated food.** (a) As used in this act, the following terms shall mean:

(1) "Canned food," any food commercially processed and prepared for human consumption.

(2) "Perishable food," any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen.

(b) All other provisions of law notwithstanding, a good faith donor of canned or perishable food, to a bona fide charitable or not for profit organization for ultimate distribution to needy individuals, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of the donor.

(c) All other provisions of law notwithstanding, a bona fide charitable or not for profit organization which in good faith receives and distributes food, which complies with K.S.A. 65-655 et seq., and amendments thereto, at the time it was donated and which is fit for human consumption at the time it is distributed, without charge, shall not be subject to criminal or civil liability arising from an injury or death due to the condition of such food unless such injury or death is a direct result of the willful, wanton, malicious or intentional misconduct of such organization.

(d) The provisions of this act shall govern all good faith donations of canned or perishable food which is not readily marketable due to appearance, freshness, grade, surplus or other conditions, but nothing in this act shall restrict the authority of any appropriate agency to regulate or ban the use of such food for human consumption.

History: L. 1983, ch. 202, § 1; L. 1996, ch. 101, § 1; July 1.

**65-688. Retail food stores and food processing plants; inspection fees; rules and regulations.** [See Revisor's Note] (a) As used in this section and K.S.A. 65-689, and amendments thereto:

(1) "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include roadside markets that offer only fresh fruits and vegetables for sale, food service establishments or food and beverage vending machines.

(2) "Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to the consumer. "Food processing plant" shall not include any operation or individual beekeeper that produces or stores honey who does not process or offer the honey for sale at retail.

(3) "Food" means a raw, cooked or processed edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption or chewing gum.

(4) "Secretary" means the secretary of agriculture.

(b) In order to reimburse the state of Kansas for inspections by the secretary of agriculture of retail food stores and food processing plants, the secretary of agriculture shall adopt rules and regulations establishing a graduated inspection fee schedule to cover all of the cost of inspection of retail food stores and food processing plants which shall not exceed \$200 per calendar year for each retail food store and food processing plant location. Whenever the secretary determines that the total amount of revenue derived from the fees collected pursuant to this section are insufficient to carry out the purposes for which the fees are collected, the secretary may amend such rules and regulations to increase the amount of the fee or fees, except that the amount of any fee shall not exceed the maximum amount authorized by this subsection. Whenever the amount of fees collected pursuant to this subsection provides revenue in excess of the amount necessary to carry out the purposes for which such fees are collected, it shall be the duty of the secretary to decrease the amount of the fees prescribed for retail food stores or food processing plants by amending the rules and regulations which fix the fees, as the case may be.

(c) All moneys received as fees under this section shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food safety fee fund.

(d) The secretary of agriculture shall adopt rules and regulations necessary to carry out the provisions of this section.

History: L. 2001, ch. 203, § 2; L. 2002, ch. 91, § 16; L. 2004, ch. 147, § 6; July 1.

**65-689. Same; license requirements, fees, inspections, denial, hearing, display.** (a) It shall be unlawful for any person to engage in the business of conducting a retail food store or food processing plant unless such person shall have in effect a valid license therefor issued by the secretary. For the purpose of this section, the sale of food in the same location less than seven days in any calendar year shall be construed as the occasional sale of food. Nothing in this act shall prevent the secretary from inspecting any retail food store or food processing plant when a complaint against such retail food store or food processing plant is transmitted to the secretary or any authorized agent thereof.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee. Application fees may be adjusted in accordance with

the type of retail food store or food processing plant or based on other criteria as determined by the secretary. Such license fee shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the retail food store and food processing plant inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the retail food store or food processing plant designated in the application, to determine that it complies with rules and regulations adopted pursuant to subsection (d) of section 3 [65-688], and amendments thereto. If the retail food store or food processing plant is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(c) Every license issued hereunder shall be displayed conspicuously in the retail food store or food processing plant for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

History: L. 2001, ch. 203, § 3; July 1.

## FOOD SERVICE AND LODGING ACT

**36-501. Definitions.** As used in the food service and lodging act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Hotel" means every building or other structure which is kept, used, maintained, advertised or held out to the public as a place where sleeping accommodations are offered for pay primarily to transient guests and in which four or more rooms are used for the accommodation of such guests, regardless of whether such building or structure is designated as a cabin camp, tourist cabin, motel or other type of lodging unit.

(b) "Rooming house" means every building or other structure which is kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, but which does not maintain common facilities for the serving or preparation of food for such guests.

(c) "Boarding house" means every building or other structure which is kept, maintained, advertised or held out to the public to be a place where sleeping accommodations are furnished for pay to transient or permanent guests and in which eight or more guests may be accommodated, and which maintains common facilities for the serving or preparation of food for such guests. The term "boarding house" shall not include facilities licensed under paragraph (5) of subsection (a) of K.S.A. 75-3307b and amendments thereto.

(d) "Lodging establishment" means a hotel, rooming house or boarding house.

(e) "Food service establishment" means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

(f) "Food" means any raw, cooked or processed edible substance, beverage or ingredient used or intended for use or for sale, in whole or in part, for human consumption.

(g) "Food vending machine" means any self-service device which, upon insertion of a coin, coins or tokens, or by other similar means, dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation but shall not include any vending machine dispensing only bottled or canned soft drinks, or prepackaged and nonpotentially hazardous food, chewing gum, nuts or candies.

(h) "Food vending machine company" means any person who is in the business of operating and servicing food vending machines.

(i) "Food vending machine dealer" means any manufacturer, remanufacturer or distributor of food vending machines who sells food vending machines to food vending machine companies.

(j) "Person" means an individual, partnership, corporation or other association of persons.

(k) "Municipality" means any city or county of this state.

(l) "Secretary" means the secretary of health and environment.

(m) "Department" means the department of health and environment.

History: L. 1975, ch. 314, § 5; L. 1986, ch. 324, § 1; July 1.

**36-502. License for lodging establishment required; application, form; inspection; denial, hearing; designation of type of unit; display; duplicate; fees; existing licenses continued in effect.** (a) It shall be unlawful for any person to engage in the business of conducting a lodging establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by the appropriate license fee required by subsection (c) of this section. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the lodging establishment designated in the application, to determine that it complies with the standards for lodging establishments promulgated pursuant to this act. If such lodging establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) Each license shall designate whether the licensed lodging unit is a hotel, rooming house or boarding house. Any person obtaining a license to engage in the business of conducting a rooming house or boarding house shall not have the right to use the name "hotel" in connection with such business. Every license issued hereunder shall be displayed conspicuously in the lodging establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

(c) The fee for a license to conduct a lodging establishment in this state for all or any part of any calendar year shall be \$30, except that the fee for any lodging establishment containing 10 sleeping rooms shall be \$35 and for every additional 10 rooms therein, an additional fee of \$5 shall be charged. All lodging establishments which are new, newly constructed or have a change of ownership shall pay an application fee which may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$100 in addition to the license fee.



(d) Any person who, on the effective date of this act, has a valid license to operate a hotel or rooming house shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a lodging establishment issued under the provisions of this act.

History: L. 1975, ch. 314, § 6; L. 1978, ch. 154, § 1; L. 1984, ch. 313, § 55; July 1, 1985.

**36-503. License for food service establishment required; exceptions; application, form, application and license fees, exemptions; inspection; denial, hearing; display; duplicate; existing licenses continued in effect.**

(a) It shall be unlawful for any person to engage in the business of conducting a food service establishment unless such person shall have in effect a valid license therefor issued by the secretary of health and environment, except that any food service establishment providing only a device for the convenience and operation by a customer for the purpose of heating prepackaged food with no provision for consumption of food on the premises, or any food service establishment licensed by the secretary pursuant to any other law and maintained in connection with any premises licensed by the secretary pursuant to any other law shall not be required to obtain a license under this section, nor shall any person engaged only in the serving of food on railway dining cars or in the occasional sale or serving of food be required to obtain a license hereunder. For the purpose of this section, the sale or serving of food in the same location less than seven days in any calendar year shall be construed as the occasional sale or serving of food. Nothing in this act shall prevent the secretary of health and environment from inspecting any food service establishment when a complaint against such food service establishment is transmitted to the secretary of health and environment or any authorized agent thereof except that no provision of this act shall be construed to authorize the secretary of health and environment to inspect or cause to be inspected under the provisions of this act any food service establishment licensed by the secretary of health and environment pursuant to any other law or maintained in connection with any premises licensed by the secretary pursuant to any other law which food service establishment is not required to obtain a license under this section.

(b) Applications for such licenses shall be made on forms prescribed by the secretary, and each such application shall be accompanied by an application fee and by a license fee, each of which shall be established in an amount fixed by rules and regulations adopted by the secretary of health and environment. Application fees may be adjusted in accordance with the type of establishment or based on other criteria as determined by the secretary, but in no event shall any application fee exceed \$200. Such license fee shall not exceed \$200 and shall be fixed in an amount which, together with the application fee, is sufficient to defray the cost of administering the food service establishment inspection and licensure activities of the secretary. Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the food service establishment designated in the application, to determine that it complies with the standards for food service establishments promulgated pursuant to this act. If such food service establishment is found to be in compliance, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(c) Every license issued hereunder shall be displayed conspicuously in the food service establishment for which it is issued, and no such license shall be transferable to any other person or location. Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

(d) Any person who, on the effective date of this act, has a valid license to operate a restaurant shall be a licensee under the provisions of this act, and any such license is hereby deemed to be a license to operate a food service establishment issued under the provisions of this act.

(e) A premises where prepackaged individual meals are distributed to persons eligible under the federal older Americans act shall not pay any fee prescribed under subsection (b).

History: L. 1975, ch. 314, § 7; L. 1976, ch. 205, § 1; L. 1978, ch. 154, § 2; L. 1981, ch. 181, § 1; L. 1982, ch. 181, § 1; L. 1984, ch. 313, § 56; L. 1993, ch. 196, § 1; L. 2001, ch. 203, § 1; July 1.

**36-504. License for food vending machine companies required; application, form, application fee; inspection; denial, hearing; license fee; display; duplicate; records; information on machine; machines from licensed dealers only; inoperative machines; additional machines; license for vending machine dealers; application, form, fee; certain reports required.**

(a) It shall be unlawful for any person to engage in the business of conducting a food vending machine company unless such person shall have in effect a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary, and each such application shall specify the brand name and serial number of each food vending machine to be operated and serviced by the applicant during the period of licensure and shall be accompanied by an application fee in an amount fixed by rules and regulations adopted by the secretary of health and environment not to exceed \$100 and by the appropriate license fee required by subsection (b). Prior to the issuance of any such license, the secretary shall inspect or cause to be inspected the applicant and each food vending machine for which the applicant is to be licensed, to determine that they are in compliance with the applicable food service standards promulgated pursuant to this act. If the applicant and such machines are found to be in compliance with such standards, the secretary shall issue the license. If the application for license is denied, the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereof if a written request

therefor is filed with the secretary within twenty (20) days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act.

(b) The license fee for a food vending machine company shall be an amount equal to the product of the total number of food vending machines to be operated and serviced by the food vending machine company during the calendar year, multiplied by \$3, except that no food vending machine shall be included in such total number which is operated and serviced by a state institution or a public school.

(c) Every license issued hereunder shall be displayed conspicuously on the premises of the food vending machine company for which it is issued, and no such license shall be transferable to any other person nor shall such license be valid for the operation and service of any food vending machines other than those specified in the application for a license under subsection (a) or those additional food vending machines for which operation and servicing are authorized pursuant to subsection (f). Whenever any such license is lost, destroyed or mutilated, a duplicate license shall be issued to any otherwise qualified licensee upon application therefor and the payment of a fee in the amount of \$3.

(d) Each licensed food vending machine company shall keep a current record of the location of each food vending machine which such company is licensed to operate and service, and such record shall be available at any reasonable time to the secretary. Each licensed food vending machine company shall cause the name of such company, the service telephone number and such additional information as the secretary may require, to be displayed conspicuously on each food vending machine that such company is licensed to operate and service.

(e) Each licensed food vending machine company shall notify the secretary within 10 days of the brand name and serial number of all food vending machines that become inoperative and are thereafter disposed of by such company or that are obtained by such company for use in addition to those which the food vending machine company is currently licensed to operate and service. Except for food vending machines obtained through isolated or occasional purchases thereof from a licensed food vending machine company, food vending machine companies shall be licensed to operate and service only food vending machines which are obtained from food vending machine dealers licensed pursuant to subsection (g).

(f) Whenever food vending machines are obtained by a licensed food vending machine company which are to be operated and serviced in addition to those currently authorized under the license, such company may apply to the secretary to include such additional machines under the license of such company. Such application shall be in the form prescribed by the secretary and each such application shall specify the brand name and serial number of each such additional machine and shall be accompanied by a fee of \$2 for each such additional machine. Prior to the issuance of such authorization, the secretary shall inspect or cause to be inspected each additional food vending machine to determine that it is in compliance with the applicable food service standards promulgated pursuant to this act. Only such additional machines which are in compliance with such standards shall be included under the license of such company.

(g) It shall be unlawful for any person to engage in business as a food vending machine dealer and to sell food vending machines to food vending machine companies licensed in this state unless such person shall have a valid license therefor issued by the secretary of health and environment. Applications for such licenses shall be on forms prescribed by the secretary and each such application shall be accompanied by the fee prescribed in this subsection. A person without this state may make application to the secretary for a license as a food vending machine dealer and be granted such a license by the secretary and thereafter shall be subject to all of the applicable provisions of this act and entitled to act as a licensed food vending machine dealer in this state, subject however, to such person filing proof with the application to the secretary of health and environment that such person has appointed the secretary of state of Kansas as agent for receipt of service of process relating to any matter or issue arising under this act. The fee for a food vending machine dealer's license for all or any part of any calendar year shall be \$25.

(h) A licensed food vending machine dealer shall report to the secretary of health and environment on or before the last day of each calendar month all sales of food vending machines made during the preceding month to Kansas vending machine companies, on forms prescribed by such secretary, showing the name and address of the purchaser, brand name and serial number of the machine and its sale price.

History: L. 1975, ch. 314, § 8; L. 1976, ch. 205, § 2; L. 1978, ch. 154, § 3; L. 1984, ch. 313, § 57; July 1, 1985.

**36-505. Renewal of licenses; application, form, fee; inspection; noncompliance, notice; remedial action; denial, hearing; failure to renew, restoration fee.** Except as otherwise provided in this section, any license issued under the provisions of this act shall expire on December 31 of the year in which it is issued, and may be renewed by making application to the secretary on or before the expiration date. Application for renewal of a license shall be made on a form prescribed by the secretary and shall be accompanied by the license fee required for the issuance of an original license. Prior to the renewal of any such license, the secretary shall inspect or cause to be inspected the licensed premises or food vending machines which are to be operated and serviced under authority of a license issued under this act to determine the compliance of such premises with the applicable standards promulgated pursuant to this act. Lodging establishments shall not be required to be inspected prior to license renewal. If an inspection of the premises is required and such inspection is not made prior to the expiration date of the license sought to be renewed, such license shall be valid until the inspection has been made and the secretary has granted or denied the application for renewal. No license shall be renewed unless and until the licensed premises for which it is issued is found to be in compliance with the applicable standards promulgated pursuant to this act. A food vending machine dealer license shall be renewed without inspection. If the secretary shall refuse to renew any license, the

secretary shall give written notice thereof to the licensee, specifying the changes or alterations necessary in the establishment to effect complete compliance with the applicable standards and stating that, if such compliance is effected within the period of time designated in the notice, the license shall be renewed. If the licensee fails to effect complete compliance with the applicable standards within the time prescribed in such notice, the application for renewal of a license shall be denied, and the secretary shall give written notice thereof to the applicant, stating also that the applicant is entitled to a hearing thereon, if a written request therefor is filed with the secretary within 20 days of the date such notice is sent. Such hearing shall be held in accordance with the provisions of the Kansas administrative procedure act. If, for any reason, a licensee fails to renew a license prior to the expiration date thereof, the licensee may obtain a renewal of such license within 30 days following the expiration date thereof, by complying with the foregoing provisions of this section and paying a restoration fee in the amount of \$10.

History: L. 1975, ch. 314, § 9; L. 1984, ch. 313, § 58; L. 1993, ch. 196, § 2; July 1.

**36-506. Rules and regulations establishing standards for lodging establishments.** (a) The secretary of health and environment, after consultation with the food service and lodging advisory committee, shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of lodging establishments. The lodging standards promulgated by such rules and regulations shall relate to:

- (1) Water supply;
- (2) heating;
- (3) lighting;
- (4) ventilation;
- (5) toilet and other sanitary facilities;
- (6) conditions increasing the hazards of fire, accidents or other calamities;
- (7) bedding and furnishings;
- (8) sewage disposal; and
- (9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a lodging establishment in a safe and sanitary manner.

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in lodging establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing lodging standards. Such standards shall be applicable uniformly throughout the state, except that the secretary may establish different standards for each of the various classes of lodging establishments. Any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for lodging establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution standards which are more stringent than those established by the secretary.

History: L. 1975, ch. 314, § 10; July 1.

**36-507. Rules and regulations establishing standards for food service establishments and food vending machines.** (a) The secretary of health and environment, after consultation with the food service and lodging advisory committee, shall adopt rules and regulations establishing minimum standards for the safe and sanitary operation of food service establishments. The food service standards promulgated by such rules and regulations shall relate to:

- (1) Preparation, sale, serving and storage of food;
- (2) water supply;
- (3) heating;
- (4) lighting;
- (5) ventilation;
- (6) toilet and other sanitary facilities;
- (7) conditions increasing the hazards of fire, accidents or other calamities;
- (8) sewage disposal; and
- (9) such other minimum conditions which the secretary deems necessary for the operation and maintenance of a food service establishment in a safe and sanitary manner.

(b) The standards promulgated pursuant to the rules and regulations adopted hereunder shall be designed to ensure the health, comfort and safety of the guests in food service establishments. Such standards may be based upon or incorporate by reference specific editions, or portions thereof, of nationally recognized codes establishing food service standards. Such standards shall be applicable uniformly throughout the state, and any provision of an ordinance or resolution of any municipality, prescribing safety and sanitation standards for food service establishments, which does not conform to the minimum standards promulgated by the secretary pursuant to this section, shall be null and void; but nothing herein shall be construed as precluding any municipality from establishing by ordinance or resolution food service standards which are more stringent than those established by the secretary: Provided, That no such ordinance or resolution shall be effective unless and until it has been approved by the secretary.

(c) In addition to the food service standards promulgated pursuant to this section, the secretary shall adopt rules and regulations establishing specific requirements for sanitary design, construction, location, servicing and operation of food vending machines. Such standards may be based upon, or may incorporate by reference, recommended

vending sanitation codes of the United States public health service which are in existence on the effective date of this act.

History: L. 1975, ch. 314, § 11; July 1.

**36-508. Annual inspections by secretary; noncompliance, notice; remedial action; suspension or revocation, hearing.** The secretary shall inspect or cause to be inspected, at least once annually, every food service establishment in this state. For such inspections the secretary or the secretary's lawful agent shall have the right of entry and access thereto, at any reasonable time. Whenever, upon inspection, it shall be determined that any establishment does not comply with the applicable standards promulgated by the rules and regulations of the secretary, it shall be the duty of the secretary to give written notice to the owner, proprietor or agent in charge of such establishment of the changes or alterations necessary to effect a complete compliance with such standards. Such notice shall provide that the establishment shall be brought into compliance with the applicable standards within a period of time specified in the notice, which shall be not less than 10 days, except that a shorter period of time for compliance may be provided in the notice whenever the secretary believes it essential to protect the public health and safety. Such notice also shall state that if compliance with the applicable standards is not effected within the time prescribed, the license for such establishment shall be subject to suspension or revocation. The licensee of any establishment, for which a notice of noncompliance is given pursuant to this section, may apply to the secretary for an extension of the time prescribed in the notice for compliance with the applicable standards. Upon review of any such application, the secretary may grant or deny such application or modify the provisions of any such notice with respect to the time for compliance with any of the particulars stated therein. Upon reinspection of any establishment for which a notice of noncompliance has been issued pursuant to this section, if such establishment is found to be in noncompliance with the applicable standards promulgated pursuant to this act, the secretary may determine to suspend or revoke the license issued for such establishment. In such event, the secretary shall send written notice to the licensee that the license for such establishment will be suspended or revoked, effective 20 days after the date such notice is sent, unless within such time the licensee files with the secretary a written request for a hearing on the proposed suspension or revocation. All hearings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1975, ch. 314, § 12; L. 1984, ch. 313, § 59; L. 1993, ch. 196, § 3; July 1.

**36-509. Hearing; powers of secretary or hearing officer; procedure; affirmation, rescission or modification of order; appeal.** (a) Whenever a timely request for a hearing shall be filed with the secretary pursuant to the provisions of this act the secretary shall set a time and place for such hearing which shall be held within not to exceed 20 days of the request therefor. Upon such hearing, the secretary or a presiding officer from the office of administrative hearings may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. At the hearing, the applicant shall have the right to be represented by counsel, to present witnesses and evidence in own behalf and to cross-examine adverse witnesses.

(b) Upon completion of the hearing, the secretary may affirm, rescind or modify the order denying, suspending or revoking the applicant's license. Any person aggrieved by any such decision of the secretary may appeal to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

History: L. 1975, ch. 314, § 13; L. 1984, ch. 313, § 60; L. 2004 ch. 145, § 12; July 1, 2005.

**36-510. Enforcement of act by secretary; contracts providing for enforcement by municipalities, fire marshal or secretary of health and environment authorized; certain food service establishments licensed under other laws; compliance with standards required; delegation of enforcement; suspension or revocation of license; hearing.** (a) The secretary shall be responsible for the enforcement of the lodging and food service standards promulgated pursuant to this act, but the secretary is hereby authorized and empowered to contract with the governing body of any municipality for the enforcement of all or any portion of such standards, whenever the secretary shall determine that such municipality has adequate personnel to provide proper enforcement. Any municipality entering into a contract with the secretary to enforce such standards shall act as an agent of the secretary in carrying out such duties, and no such municipality shall charge any lodging establishment or food service establishments a fee for services performed as an agent of the secretary under such contract which is in addition to and separate from any fee such establishment is required to pay to the secretary under the provisions of this act. Such municipality shall enforce such standards within such municipalities of this state as are designated in the contract. Any inspection of lodging or food service establishments by officers, employees or agents of any such municipality, and any notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

(b) The secretary and the state fire marshal are hereby authorized and empowered to enter into a contract authorizing the state fire marshal and the fire marshal's deputies or lawful agents to enforce all or any portion of the lodging or food service standards promulgated pursuant to this act. Such contract shall designate specific lodging or food service establishments, or types of lodging or food service establishments, wherein such authority may be exercised. Any inspection of such establishments by the state fire marshal or the fire marshal's deputies or lawful agents, to determine compliance with lodging or food service standards established pursuant to this act, and any

notice of noncompliance issued as a result of any such inspection, shall have the same force and effect as if such had been done by the secretary.

Such contract also may provide similar authority for the secretary of health and environment and the secretary's officers, employees and agents with respect to enforcement of all or any portion of the Kansas fire prevention code in specified lodging or food service establishments, or in types of lodging or food service establishments. Any inspection of such establishments by the secretary, or the secretary's officers, employees and agents, to determine compliance with the Kansas fire prevention code, shall have the same force and effect as if performed by the state fire marshal or the marshal's deputies and agents.

(c) Any food service establishment which is not required to be licensed under the provisions of this act, but which is licensed by the secretary pursuant to any other law, or which is maintained in connection with premises which are licensed by the secretary pursuant to any other law, shall be subject to the food service standards established pursuant to this act. In the discretion of the secretary, enforcement of such standards may be delegated to the personnel of the department who are responsible for enforcing the provisions of the law under which such food service establishment or premises are licensed. Failure of any such premises to comply with the food service standards promulgated pursuant to this act shall be grounds for the suspension or revocation of the license issued for the premises under such other law. The licensee shall not have any license revoked or suspended without first being given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act.

History: L. 1975, ch. 314, § 14; L. 1976, ch. 205, § 3; L. 1984, ch. 313, § 61; July 1, 1985.

**36-511. Food vending machines; license required to operate or service; failure to obtain license or to comply with standards, sealing of machine; removal or breaking seal declared to be misdemeanor.** No food vending machine shall be operated or serviced in this state except by a food vending machine company and under a license obtained therefor in accordance with the provisions of K.S.A. 36-504. Each food vending machine operated or serviced in this state without such a license or in a manner which is not in compliance with the applicable standards for food service promulgated pursuant to this act, shall be sealed by the secretary by placing appropriately labeled seals on each such machine so that it is then inoperable. It shall be unlawful for any person to remove such seal from a food vending machine, or otherwise break such seal such that the food vending machine is again operable, unless such removal or breaking is accomplished by specific authorization of the secretary upon placing such machine under authority of a valid license issued to a food vending machine company or correction of the noncomplying conditions of such machine by the food vending machine company licensed therefor. Such unlawful removal or breaking of a seal on a food vending machine under this section shall be a class C misdemeanor.

History: L. 1975, ch. 314, § 15; July 1.

**36-512. Disposition of moneys; food service inspection reimbursement fund created.** (a) The secretary shall remit all moneys received by the secretary under the provisions of this act to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Except for moneys remitted under subsection (b), upon receipt of each such remittance the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(b) The secretary shall remit all moneys received by the secretary from fees from food service establishments located in a municipality where food service inspection services are provided by a local agency under contract with the secretary to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the food service inspection reimbursement fund which is hereby created. On July 1, 1988, and on the first day of each month thereafter, the director of accounts and reports shall transfer from the food service inspection reimbursement fund to the state general fund an amount equal to 20% of all money credited to such fund during the preceding month. Expenditures from the food service inspection reimbursement fund shall be made to reimburse each local agency under contract with the secretary for food service inspection services in an amount equal to 80% of the money received from food service establishments in the municipality served by the local agency. All expenditures from the food service inspection reimbursement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

History: L. 1975, ch. 314, § 16; L. 1983, ch. 286, § 9; L. 1985, ch. 139, § 1; L. 1988, ch. 135, § 1; L. 2001, ch. 5, § 106; July 1.

**36-513. Service of notice.** Any written notice required to be issued by the secretary pursuant to this act, shall be served in accordance with the notice provisions of the Kansas administrative procedure act.

History: L. 1975, ch. 314, § 17; L. 1984, ch. 313, § 62; July 1, 1985.

**36-515. Violation of standards; suspension or revocation of license; violation of act declared to be misdemeanor; injunctive relief.** (a) Any failure by a licensee to comply with the food service or lodging standards established pursuant to this act shall be grounds for the suspension or revocation of such licensee's license to operate a food service establishment, a lodging establishment or food vending machines.

(b) Upon conviction, any person who violates any provision of this act shall be guilty of a class C misdemeanor, except that upon any subsequent conviction such person shall be guilty of a class B misdemeanor.

(c) The secretary may seek injunctive relief from the appropriate district court to enjoin any operator of a food service establishment, lodging establishment or food vending machine company from conducting business when such operator has failed to make application for or to obtain a license for such purpose as required by the food service and lodging act or when such license has been suspended or revoked.

History: L. 1975, ch. 314, § 19; L. 1982, ch. 181, § 2; July 1.

**36-515a. Temporary suspension of license without notice or hearing; limitations.** (a) If the secretary finds that the public health or safety is endangered by the continued operation of a lodging establishment or food service establishment, the secretary may suspend temporarily the license of such establishment without notice or hearing in accordance with the emergency adjudication procedures of the provisions of the Kansas administrative procedure act.

(b) In no case shall a temporary suspension of a license under this section be in effect for a period of time in excess of 90 days. At the end of such period of time, the licensee shall be reinstated to full licensure unless the secretary has suspended or revoked the license, after notice and hearing, or the license has expired as otherwise provided under the food service and lodging act.

(c) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 1982, ch. 181, § 4; L. 1984, ch. 313, § 63; July 1, 1985.

**36-515b. Civil penalty for violation of act; procedure.** (a) Any person who violates any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, in addition to any other penalty provided by law, may incur a civil penalty imposed under subsection (b) in an amount not to exceed \$500 for each violation and, in the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) The director of the division of health, upon a finding that a person has violated any provision of the food service and lodging act or any rule and regulation adopted pursuant thereto, may impose a civil penalty within the limits provided in this section upon such person, which civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed.

(c) No civil penalty shall be imposed pursuant to this section except upon the written order of the director of the division of health to the person who committed the violation. Such order shall state the violation, the penalty to be imposed and the right of such person to appeal to the secretary. Any such person, within 20 days after notification, may make written request to the secretary for a hearing in accordance with the provisions of the Kansas administrative procedure act. The secretary shall affirm, reverse or modify the order of the director and shall specify the reasons therefor.

(d) Any person aggrieved by an order of the secretary made under this section may appeal such order to the district court in the manner provided by the act for judicial review and civil enforcement of agency actions.

(e) Any penalty recovered pursuant to the provisions of this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(f) This section shall be a part of and supplemental to the food service and lodging act.

History: L. 1982, ch. 181, § 5; L. 1985, ch. 140, § 1; L. 2001, ch. 5, § 107; July 1.

**36-515c. Citation of act.** The provisions of K.S.A. 36-501 to 36-515, inclusive, and K.S.A. 36-515a to 36-515c, inclusive, and acts amendatory thereof or acts made specifically supplemental thereto shall be known and may be cited as the food service and lodging act.

History: L. 1982, ch. 181, § 6; July 1.

**36-516. Gas stoves in public places, vents required; penalty for violation.** (a) No person shall install or own any gas stove in any public building, resort, hotel, restaurant, tourist camp or other similar public place in this state unless such stove is properly connected with a chimney or other outlet or combination of outlets.

(b) Any violation of the provisions of this section is a class C misdemeanor.

History: L. 1977, ch. 147, § 1; July 1.

**36-517. Lodging establishments; smoke detectors for deaf and hearing impaired.** (a) Every licensed lodging establishment designated as a hotel shall provide at no additional charge to deaf and hearing impaired guests, upon request of such guests, portable smoke detectors of the type suitable for providing visual warning to such guests, or a room equipped with fixed visual warning smoke detectors or a ground floor guest room accessible to the out-of-doors. Each licensed lodging establishment designated as a hotel shall have available for such guests not less than one portable visual warning smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors for each 50 guest rooms of such lodging establishment, except that no such lodging establishment designated as a hotel shall be required to have more than a total of six portable visual warning smoke detectors, or six rooms equipped with fixed visual warning smoke detectors or six ground floor guest rooms accessible to the out-of-doors nor shall any such lodging establishment have less than one such smoke detector, or one room equipped with a fixed visual warning smoke detector or one ground floor guest room accessible to the out-of-doors.

(b) This section shall be part of and supplemental to the food service and lodging act.

History: L. 1988, ch. 134, § 1; July 1, 1989.

---

**KANSAS ADMINISTRATIVE REGULATIONS**  
**Kansas Department of Agriculture**  
**Article 28. – Food Safety**

**4-28-1. Definitions.** (a) "Bakery" and "bakeshop" shall mean any place, premises, or establishment where any bakery product is prepared, processed, or manufactured for sale to the general public.

(b) "Bakery product" shall mean bread, rolls, cake, pies, cookies, and all similar goods used or intended to be used for human consumption.

(c) "Food" shall have either of the following meanings:

(1) The meaning specified in K.S.A. 36-501, and amendments thereto, when relating to the licensing, inspection, and regulation of the following:

(A) Mobile retail ice cream vendors;

(B) food service establishments located in retail food stores; and

(C) food vending machines, food vending machine companies, and food vending machine dealers; or

(2) the meaning specified in K.S.A. 65-688, and amendments thereto, when relating to the licensing, inspection, and regulation of retail food stores and food processing plants.

(d) "Food processing plant" shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(e) "Food service establishment located in a retail food store" shall mean a "food service establishment," as defined in K.S.A. 36-501 and amendments thereto, that is located in a "retail food store," as defined in subsection (j).

(f) "Food vending machine" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(g) "Food vending machine company" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(h) "Food vending machine dealer" shall have the meaning specified in K.S.A. 36-501, and amendments thereto.

(i) "Mobile retail ice cream vendor" shall mean a vehicle-mounted prepackaged frozen dessert facility designed to be readily movable.

(j) "Retail food store" shall have the meaning specified in K.S.A. 65-688, and amendments thereto.

(k) "Secretary" shall mean the secretary of agriculture or the secretary's authorized representative. (Authorized by K.S.A. 65-673, as amended by L. 2004, Ch. 145, Sec. 21; implementing K.S.A. 65-673, as amended by L. 2004, Ch. 145, Sec. 21 and L. 2004, Ch. 192, Sec. 2; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005.)

**4-28-2. Adoption by reference.** The provisions of 21 C.F.R. Parts 100 through 169, excluding 21 C.F.R. 100.1 and 100.2, as in effect on April 1, 2003, are hereby adopted by reference. (Authorized by K.S.A. 65-673; implementing K.S.A. 65-673 and L. 2004, Ch. 192, Sec. 2; effective, T-4-11-5-04, Nov. 5, 2004; effective Feb. 18, 2005.)

**4-28-3. Fees; mobile retail ice cream vendor.** The license fee for each mobile retail ice cream vendor engaged solely in the sales of prepackaged frozen desserts shall be five dollars. Each license shall expire on December 31 in the year for which the license is issued. (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

**4-28-4. Fees; application for food vending machine company.** The onetime application fee for each food vending machine company doing business in Kansas shall be \$30. (Authorized by K.S.A. 36-504; implementing K.S.A. 36-504 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

**4-28-5. Fees; food processing plant.** Each food processing plant shall be licensed by the secretary. (a) Each person operating or wanting to operate a food processing plant shall submit an application on a form supplied by the department with the following fees:

(1) Application fee. Each person shall submit a onetime application fee based on the size of the plant as follows:

(A) Less than 1,000 square feet: \$50; and

(B) 1,000 square feet or more: \$150.

(2) License fee. Each person shall submit a license fee based on the size of the plant as follows:

(A) Less than 1,000 square feet: \$50; and

(B) 1,000 square feet or more: \$150.

(b) Each license issued shall expire on December 31 in the year for which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the license fee specified in paragraph (a)(2). (Authorized by K.S.A. 65-689; implementing K.S.A. 65-689 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

**4-28-6. Fees; retail food store.** Each retail food store shall be licensed by the secretary. (a) Each person operating or wanting to operate a retail food store shall submit an application on a form supplied by the department with the following fees:

(1) Application fee. Each person shall submit a onetime application fee based on the size of the store as follows:

(A) Less than 5,000 square feet: \$50;

(B) 5,000 to 15,000 square feet: \$100; and



(C) more than 15,000 square feet: \$150.

(2) License fee. Each person shall submit a license fee based on the size of the store as follows:

(A) Less than 5,000 square feet: \$50;

(B) 5,000 to 15,000 square feet: \$100; and

(C) more than 15,000 square feet: \$150.

(b) Each license shall expire on December 31 in the year in which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and license fee specified in paragraph (a)(2). (Authorized by K.S.A. 65-689; implementing K.S.A. 65-689 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

**4-28-7. Fees; food service establishment located in a retail food store.** (a) Each person operating or wanting to operate a food service establishment located in a retail food store shall submit an application on a form supplied by the department with the following fees:

(1) The application fee shall be \$200.

(2) The license fee shall be \$200.

(b) Each license shall expire on December 31 in the year for which the license is issued.

(c) Each license shall require annual renewal by the licensee's submission of an application for renewal, on a form supplied by the department, and the license fee specified in paragraph (a)(2). (Authorized by K.S.A. 2003 Supp. 36-503; implementing K.S.A. 2003 Supp. 36-503 and L. 2004, Ch. 192, Sec. 2; effective Feb. 18, 2005.)

## **Food, Drugs, Cosmetics**

### **Article 21**

**28-21-1. Labeling; definition.** Labeling includes all written, printed, or graphic matter accompanying an article at any time while such article is for sale, delivery, held for sale, or offered for sale in the state of Kansas. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-2. Difference of opinion among experts.** The existence of a difference of opinion, among experts qualified by scientific training and experience, as to the truth of a representation made or suggested in the labeling is a fact (among other facts) the failure to reveal which may render the labeling misleading, if there is a material weight of opinion contrary to such representation. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-4. Guaranty; definition, and suggested forms.** (a) A guaranty or undertaking referred to in K.S.A. 65-659 (b) may be:

(1) Limited to a specific shipment or other delivery of an article, in which case it may be a part of or attached to the invoice or bill of sale covering such shipment or delivery, or  
(2) General and continuing, in which case, in its application to any shipment or other delivery of an article, it shall be considered to have been given at the date such article was shipped or delivered by the person who gives the guaranty or undertaking.

(b) The following are suggested forms of guaranty or undertaking under K.S.A. 65-659 (b):

(1) Limited form for use on invoice or bill of sale:

(Name of person giving the guaranty or undertaking) hereby guarantees that no article listed herein is adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act.)

(Signature and post-office address of person giving the guaranty or undertaking.)

(2) General and continuing form:

The article comprising each shipment or other delivery hereafter made by (name of person giving the guaranty or undertaking) to, or on the order of (name and post-office address of person to whom the guaranty or undertaking is given) is hereby guaranteed, as of the date of such shipment or delivery, to be, on such date, not adulterated or misbranded within the meaning of the Kansas food, drug and cosmetic act.

(Signature and post-office address of person giving the guaranty or undertaking.)

(c) The application of a guaranty or undertaking referred to in K.S.A. 65-659 (b) to any shipment or other delivery of an article shall expire when such article, after shipment or delivery by the person who gave such guaranty or undertaking, becomes adulterated or misbranded within the meaning of the act.

(d) A guaranty or undertaking, if signed by two or more persons, shall state that such persons severally guarantee the article to which it applies.

(e) No representation or suggestion that an article is guaranteed under the act shall be made in labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-5. Food; labeling; misbranding.** (a) Among representations in a labeling of a food which render such food misbranded is a false or misleading representation with respect to another food or a drug, device, or cosmetic.

(b) The labeling of a food which contains two or more ingredients may be misleading by reason (among other reasons) of the designation of such food in such labeling by a name which includes or suggests the name of one or more but not all such ingredients, even though the names of all such ingredients are stated elsewhere in the labeling. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-6. Food; labeling; required statements; when exempt.** (a) Where a food is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase which reveals the connection such person has with such food, such as "manufactured for and packed by \_\_\_\_\_," "distributed by \_\_\_\_\_," or other similar phrase which expresses the facts.

(b) The statement of the place of business shall include the street address, if any, of such place, unless such street address is shown in a current city directory or telephone directory.

(c) If a person manufactures, packs, or distributes a food at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such food was manufactured or packed or is to be distributed, if such statement is not misleading in any particular.

(d) The requirement that the label shall contain the name and place of business of the manufacturer, packer, or distributor shall not be considered to relieve any food from the requirement that its label shall not be misleading in any particular.

(e) (1) The statement of the quantity of the contents shall reveal the quantity of food in the package, exclusive of wrappers and other material packed with such food.

(2) The statement shall be expressed in the terms of weight, measure, numerical count, or a combination of numerical count and weight or measure, which are generally used by consumers to express quantity of such food and which give accurate information as to the quantity thereof. But if no general consumer usage in

expressing accurate information as to the quantity of such food exists, the statement shall be in terms of liquid measure if the food is liquid, or in terms of weight if the food is solid, semi-solid, viscous, or a mixture of solid and liquid; except that such statement may be in terms of dry measure if the food is a fresh fruit, fresh vegetable, or other dry commodity.

(f) (1) A statement of weight shall be in terms of the avoirdupois pound and ounce. A statement of liquid measure shall be in terms of the United States gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof and except in case of frozen food which is so consumed, shall express the volume at 68° Fahrenheit (20° centigrade). A statement of dry measure shall be in terms of the United States bushel of 2150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof; or in terms of the United States standard barrel and its subdivisions of third, half, and three-quarters barrel. However, in the case of an export shipment, the statement may be in terms of a system of weight or measure in common use in the country to which such shipment is exported.

(2) A statement of weight or measure in the terms specified in subparagraph (1) of this paragraph may be supplemented by a statement in terms of the metric system of weight or measure.

(3) Unless an unqualified statement of numerical count gives accurate information as to the quantity of food in the package, it shall be supplemented by such statement of weight, measure, or size of the individual units of the food as will give such information.

(g) Statements shall contain only such fractions as are generally used in expressing the quantity of the food. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than two places.

(h) (1) If the quantity of food in the package equals or exceeds the smallest unit of weight or measure which is specified in paragraph (f) of this section, and which is applicable to such food under the provisions of paragraph (e) (2) of this section, the statement shall express the number of the largest of such units contained in the package (for example, the statement on the label of a package which contains one quart of food shall be ``1 quart," and not ``2 pints" or ``32 fluid ounces"), unless the statement is made in accordance with the provisions of subparagraph (2) of this paragraph. Where such number is a whole number and a fraction, there may be substituted for the fraction its equivalent in smaller units, if any smaller is specified in such paragraph (f) (for example, 13/4 quarts may be expressed as ``1 quart 1 1/2 pints" or ``1 quart 1 pint 8 fluid ounces"; 11/4 pounds may be expressed as ``1 pound 4 ounces"). The stated number of any unit which is smaller than the largest unit (specified in such paragraph (f)) contained in the package shall not equal or exceed the number of such smaller units in the next larger unit so specified (for examples, instead of ``1 quart 16 fluid ounces" the statement shall be ``1 1/2 quarts" or ``1 quart 1 pint"; instead of ``24 ounces" the statement shall be ``1 1/2 pounds" or ``1 pound 8 ounces").

(2) In the case of a food with respect to which there exists an established custom of stating the quantity of the contents as a fraction of a unit, which unit is larger than the quantity contained in the package, or as units smaller than the largest unit contained therein, the statement may be made in accordance with such custom if it is informative to consumers.

(i) The statement shall express the minimum quantity, or the average quantity, of the contents of the packages. If the statement is not so qualified as to show definitely that the quantity expressed is the minimum quantity, the statement shall be considered to express the average quantity.

(j) Where the statement expresses the minimum quantity, no variation below the stated minimum shall be permitted except variations below the stated weight or measure caused by ordinary and customary exposure, after the food is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in decreased weight or measure. Variations above the stated minimum shall not be unreasonably large.

(k) Where the statement does not express the minimum quantity:

(1) Variations from the stated weight or measure shall be permitted when caused by ordinary and customary exposure, after the food is introduced into commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or measure;

(2) Variations from the stated weight, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting individual packages which occur in good packing practice.

But under subparagraph (2) of this paragraph variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the food is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment or delivery compensate for such shortage.

(l) The extent of variations from the stated quantity of the contents permissible under paragraphs (j) and (k) of this section in the case of each shipment or other delivery shall be determined by the facts in such case.

(m) A food shall be exempt from compliance with the requirements of clause (2) of K.S.A. 65-665 (e) if:

(1) The quantity of the contents, as expressed in terms applicable to such food under the provisions of paragraph (e) (2) of this section, is less than one-half ounce avoirdupois, or less than one-half fluid ounce, or (in case the units of the food can be easily counted without opening the package) less than six units; or

(2) The statement of the quantity of the contents of the package, together with all other words, statements, and information required by or under authority of the act to appear on the label, cannot, because

of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-665 (f) and regulations promulgated thereunder.

(n) A food shall be exempt while held for sale from the requirements of clause (2) of K.S.A. 65-665 (e) (requiring a statement on the label of the quantity of contents) if said food, having been received in bulk containers at a retail establishment, is accurately weighed, measured, or counted either within the view of the purchaser or in compliance with the purchaser's order.

(o) A carbonated beverage sold under a distinctive name, may be exempt from the provisions of K.S.A. 65-665 (i) (2) if the parent firm, licensee or franchise owner shall file with the board of health a list of ingredients used in the carbonated beverage, except that spice, flavoring, or coloring may be designated as spice, flavoring, or coloring without naming each. (Authorized by K.S.A. 65-665 (e), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-7. Food; labeling; prominence of required statements.** (a) A word, statement, or other information required by or under authority of the act to appear on the label may lack that prominence and conspicuousness required by K.S.A. 65-665 (f) by reason (among other reasons) of:

(1) The failure of such word, statement, or information to appear on the part or panel of the label which is presented or displayed under customary conditions of purchase;

(2) The failure of such word, statement, or information to appear on two or more parts or panels of the label, each of which has sufficient space therefor, and each of which is so designed as to render it likely to be, under customary conditions of purchase, the part or panel displayed;

(3) The failure of the label to extend over the area of the container or package available for such extension, so as to provide sufficient label space for the prominent placing of such word, statement, or information;

(4) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(5) Insufficiency of label space (for the prominent placing of such word, statement, or information) resulting from the use of label space to give materially greater conspicuousness to any other word, statement, or information, or to any design or device; or

(6) Smallness or style of type in which such word, statement, or information appears, insufficient background contrast, obscuring designs or vignettes, or crowding with other written, printed or graphic matter.

(b) No exemption depending on insufficiency of label space, as prescribed in regulations promulgated under K.S.A. 65-665 (e) or (i) shall apply if such insufficiency is caused by:

(1) The use of label space for any word, statement, design, or device which is not required by or under authority of the act to appear on the label;

(2) The use of label space, to give greater conspicuousness to any word, statement, or other information than is required by K.S.A. 65-665 (f); or

(3) The use of label space for any representation in a foreign language.

(c) (1) All words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear thereon in the English language.

(2) If the label contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label shall appear thereon in the foreign language.

(3) If the labeling contains any representation in a foreign language, all words, statements, and other information required by or under authority of the act to appear on the label or labeling shall appear on the labeling in the foreign language. (Authorized by K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-8. Conformity to definitions and standards of identity. In the conditions, among others, a food does not conform to the definition and standard of identity therefor:**

(a) If it contains an ingredient for which no provision is made in such definition and standard;

(b) If it fails to contain any one or more ingredients required by such definition and standard;

(c) If the quantity of any ingredient or component fails to conform to the limitation, if any, prescribed therefor by such definition and standard. (Authorized by K.S.A. 65-663, K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-9. Food; labeling; designation of ingredients.** (a) The name of an ingredient (except a spice, flavoring, or coloring which is an ingredient of a food other than one sold as a spice, flavoring, or coloring), required by K.S.A. 65-665 (i) (2) to be borne on the label of a food, shall be a specific name and not a collective name. But if an ingredient (which itself contains two or more ingredients) conforms to a definition and standard of identity prescribed by regulations under K.S.A. 65-663, such ingredient may be designated on the label of such food by the name specified in the definition and standard, supplemented, in case such regulations require the naming of optional ingredients present in such ingredient, by a statement showing the optional ingredients which are present in such ingredient.

(b) No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be, within the meaning of such term as commonly understood by consumers. The term "coloring" shall not include any bleaching substance.

(c) An ingredient which is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as spice and coloring, or flavoring and coloring, as the case may be, unless such ingredient is designated by its specific name.

(d) A label may be misleading by reason (among other reasons) of:

(1) The order in which the name of ingredients appear thereon, or the relative prominence otherwise given such names; or

(2) Its failure to reveal the proportion of, or other fact with respect to, an ingredient, when such proportion or other fact is material in the light of the representation that such ingredient was used in fabricating the food.

(e) (1) A food shall be exempt from the requirements of K.S.A. 65-665 (i) (2) if all words, statements, and other information required by or under authority of the act to appear on the label of such food, cannot, because of insufficient label space, be so placed on the label as to comply with the requirements of K.S.A. 65-665 (f) and regulations promulgated thereunder. But such exemption shall be on the condition that, if the omission from the label of the statement of the quantity of the contents affords sufficient space to state legibly thereon all the information required by such clause (2), such statement of the quantity of the contents shall be omitted as authorized by 28-21-6 (m) (2), and the information required by such clause (2) shall be so stated as prominently as practicable even though the statement is not of such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase.

(2) In the case of an assortment of different items of food, when variations in the items which make up different packages packed from such assortment normally occur in good packing practice, and when such variations result in variations in the ingredients in different packages, such food shall be exempt from compliance with the requirements of clause (2) of K.S.A. 65-665 (i) with respect to any ingredient which is not common to all packages. But such exemption shall be on the condition that the label shall bear, in conjunction with the names of such ingredients as are common to all packages, a statement in terms which are as practicable as possible and which are not misleading, indicating that other ingredients may be present.

(f) A food shall be exempt while held for sale from the requirements of clause (2) of K.S.A. 65-665 (i) (requiring a declaration on the label of the common or usual name of each ingredient when the food is fabricated from two or more ingredients) if said food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with either:

(1) The labeling of the bulk container plainly in view or

(2) a counter card, sign, or other appropriate device bearing prominently and conspicuously the information required to be stated on the label pursuant to clause (2) of K.S.A. 65-665 (i). (Authorized by K.S.A. 65-665 (i) (2), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-10. Special dietary uses.** (a) The term "special dietary uses," as applied to food for man, means particular (as distinguished from general) uses of food, as follows:

(1) Uses for supplying particular dietary needs which exist by reason of a physical, physiological, pathological or other condition, including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight;

(2) Uses for supplying particular dietary needs which exist by reason of age, including but not limited to the ages of infancy and childhood;

(3) Uses for supplementing or fortifying the ordinary or usual diet with any vitamin, mineral, or other dietary property. Any such particular use of a food is a special dietary use, regardless of whether such food also purports to be or is represented for general use.

(b) No provision of any regulation under K.S.A. 65-665 (j) shall be construed as exempting any food from any other provision of the act or regulations thereunder, including K.S.A. 65-665 (a) and (g), and, when applicable, the provisions of K.S.A. 1965 Supp. 65-668 and 65-669. (Authorized by K.S.A. 65-665 (j), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

**28-21-11. Food; labeling; artificial flavoring or coloring; chemical preservatives.** (a) (1) The term "artificial flavoring" means a flavoring containing any sapid or aromatic constituent, which constituent was manufactured by a process of synthesis or other similar artifice.

(2) The term "artificial coloring" means a coloring containing any dye or pigment, which dye or pigment was manufactured by a process of synthesis or other similar artifice, or a coloring which was manufactured by extracting a natural dye or natural pigment from a plant or other material in which such dye or pigment was naturally produced.

(3) The term "chemical preservative" means any chemical which, when added to food, tends to prevent or retard deterioration thereof; but does not include common salt, sugars, vinegars, spices or oils extracted from spices, or substances added to food by direct exposure thereof to wood smoke.

(b) A food which is subject to the requirements of K.S.A. 65-665 (k) shall bear labeling, even though such food is not in package form.

(c) A statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food, or on its container or wrapper, or on any two or all of these, as may be necessary to render such statement likely to be read by the ordinary individual under customary conditions of purchase and use of such food.

(d) A food shall be exempt from compliance with the requirements of K.S.A. 65-665 (k) if it is not in package form and the units thereof are so small that a statement of artificial flavoring, artificial coloring, or chemical preservative, as

the case may be, cannot be placed on such units with such conspicuousness as to render it likely to be read by the ordinary individual under customary conditions of purchase and use.

(e) A food shall be exempt while held for sale from the requirements of K.S.A. 65-665 (k) (requiring label statement of any artificial flavoring, artificial coloring, or chemical preservatives) if said food, having been received in bulk containers at a retail establishment, is displayed to the purchaser with either: (1) The labeling of the bulk container plainly in view or (2) a counter card, sign, or other appropriate device bearing prominently and conspicuously the information required to be stated on the label pursuant to K.S.A. 65-665 (k). (Authorized by K.S.A. 65-665 (k), K.S.A. 1965 Supp. 65-673; effective Jan. 1, 1966.)

## **Sanitation; Food and Drug Establishment**

### **Article 23**

### **General Provisions**

**28-23-1. The cleanliness of the building in which food and drugs are prepared or distributed.** Every building, room, basement, or cellar occupied or used as a confectionery, cannery, packing house, creamery, cheese factory, candy factory, ice cream factory, cake factory, restaurant, hotel kitchen, grocery, drugstore, meat market, bottling works, produce house or other place or apartment used for the preparation, manufacture, packing, storage, sale, or distribution of any food or drug shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks, or other persons therein employed, and the purity and wholesomeness of the food therein produced. The term "food" as used herein shall include all articles used for food or drinks, confectionary or condiment, whether simple, mixed, or compound, and substances or ingredients used in the preparation thereof; and the term "drug" as used shall include all medicines and preparations for internal or external use recognized in the U.S. pharmacopoeia or national formulary, and any substance, or mixture of substances, intended to be used for the cure, mitigation, or prevention of disease of either man or animal. The term "transportation" as used shall apply only to intrastate traffic. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-2. All vehicles used in the transportation of food products shall be clean at all times.** The floors, walls, ceilings, furniture, receptacles, implements, and machinery of every establishment or place where food or drugs are prepared, manufactured, packed, stored, sold, or distributed; and all cars, trucks, and vehicles, used in the transportation of food products shall at no time be kept in an unclean, unhealthy or insanitary condition. Unclean, unhealthy and insanitary conditions shall be deemed to exist if refuse, dirt and waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling, distribution and transporting of the article of food or drug are not removed daily; if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and other apparatus, utensils, and machinery used in moving, handling, cutting, chopping, mixing, canning, and all other processes are not thoroughly cleaned daily or immediately after a twenty-four hour interval of disuse or interruption in use, and if the clothing of operatives, employees, clerks, or other persons therein employed is unclean. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-3. All materials used in the production of food shall be protected from spoilage.** All materials used in the production of food or drug products, and all food and drug products, shall be stored, handled and kept in a way to protect them from spoilage and contamination; and no material shall be used which is spoiled or contaminated, or which may render the finished product unwholesome or unfit for the use for which it is intended; and no water which is polluted shall be used for washing, cleaning or preparing any food product. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-4. All buildings in which food is distributed should be kept clean at all times.** The walls and ceiling of every confectionery, creamery, cheese factory, hotel kitchen, and restaurant kitchen shall be well plastered, wainscoted, or ceiled with metal, or lumber, and shall be oil painted or kept well lime washed; and all interior woodwork in every confectionery, creamery, cheese factory, hotel kitchen, and restaurant kitchen shall be kept well oiled or painted with oil paints, and kept washed clean with soap and water; and every building, room, basement, or cellar occupied, or used for the preparation, manufacture, packing, storage, sale, or distribution of food shall have an impermeable floor made of cement or tile laid in cement, brick, wood or other suitable nonabsorbent material which can be flushed and washed clean with water. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-6. Toilet facilities.** Every building, room, basement, enclosure, or premises occupied, used or maintained for the production, preparation, manufacture, canning, packing, storage, sale or distribution of food or drugs shall have adequate and convenient toilet rooms, lavatory or lavatories. The toilet room shall be separate and apart from the room or rooms where the process of production, preparation, manufacture, packing, storing, canning, selling and distribution of food is conducted. The floors of such toilet rooms shall be of nonabsorbent material, and shall be washed and scoured daily. Such toilet or toilets shall be furnished with separate venting flues and pipes, discharging into soil pipes, or shall be on the outside of and well removed from the building. Lavatories and washrooms shall be adjacent to toilet rooms, or when the toilet is outside of the building, the washroom shall be near the exit to the toilet. Lavatories and washrooms shall be supplied with soap, hot and cold water tempered by means of a mixing valve or combination faucet and clean towels, and shall be maintained in a sanitary condition. Operatives, employees, clerks, and all other persons who handle the material from which food or drugs are prepared, or the finished products, before beginning work and after visiting toilets, shall wash their hands and arms thoroughly with soap and clean water. Instructions to this effect shall be posted in a conspicuous place. (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980.)

**28-23-7. The cleanliness of the personnel who assist in the preparation of food for distribution.** No operative, employee, or other person shall expectorate on the floor or walls of any buildings, rooms, basement or cellar where the production, manufacture, packing, storing, preparation, or sale of any food or drugs is conducted. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966)

**28-23-9. Sidewalk or street display of food products; prohibitions.** (a) The sidewalk or street display of meat or meat products, fresh seafood and fish, and poultry is prohibited.

(b) Food products, other than those listed in subsection (a), which ordinarily and commonly are peeled, pared or cooked in the course of preparation for consumption may be displayed in street and sidewalk displays, so long as they are in containers which are at least eighteen (18) inches above the surface of the sidewalk or street.

(c) The street or sidewalk display of all other food products is prohibited unless such products are enclosed in glass cases or otherwise enclosed to protect the products from flies, dust or other contamination. (Authorized by K.S.A. 65-625, K.S.A. 1979 Supp. 65-626; effective Jan. 1, 1966; amended May 1, 1980.)

**28-23-10. Food being covered during delivery and while on display or on sale.** Confectionery, dates, figs, dried fruits, berries, butter, cheese, bakery products, and all foods subject to contamination, while on sale or display are required to be properly covered to effectively protect the same from contamination by handling with hands or damage by flies, dust, vermin, or other means of foreign or injurious contamination. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-11 The condition of the building in which food is prepared or handled.** No building, place, or room which is dilapidated or in such a state of repair or of such construction that it cannot be kept in a sanitary condition when used as a place for the preparation, manufacture, packing, storage, sale, or distribution of any food or drug product shall be used as a place for conducting any business handling, preparing or producing food or food products; and the owner or owners of such building, room or place shall not permit it to be used as a place for conducting such a business; and each day of use of such building, room, or place shall constitute a separate offense. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-12. The health of the personnel.** No employer shall require, permit or suffer any person to work, nor shall any person work in a building, room, basement, cellar, or vehicle occupied or used for the production, preparation, manufacture, packing, storing, sale, distribution, and transportation of food or drugs, who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, tuberculosis or consumption, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles (Rothein), whooping cough, chicken pox or other contagious disease. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-13. Those responsible for the condition of the building in which food is prepared.** Every person or corporation in charge of, or in control of or in authority over any of the places mentioned by and described in these regulations shall be responsible for the condition thereof, and it shall be his or its duty to see that the provisions of these regulations with reference to the condition, arrangement and conduct of such places are carried out. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-16 Handling of potentially hazardous foods; temperatures.** Potentially hazardous foods, including any perishable food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, or other ingredients capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, while being stored, prepared, displayed or during transportation, shall be maintained at temperatures of 45° F. or below, or 140° F. or above, except during necessary periods of preparation and service and delivery, however, such period of delivery shall not exceed ninety (90) minutes: Provided, That this regulation shall not apply to processors and handlers of eggs and egg products or milk and milk products subject to regulation by the state board of agriculture under the provisions of K.S.A. 2-2501 et seq., and K.S.A. 65-737a et seq., or regulation by the United States department of agriculture under the provisions of the agricultural marketing act of 1946, 7 U.S.C. 1921 et seq. (Authorized by K.S.A. 65-626; effective, E-68-9, March 11, 1968; effective Jan. 1, 1969; amended Jan. 1, 1970.)



## Bakeries

**28-23-20. "Bakery" or "bake shop" defined.** The word "bakery" or "bake shop" means any place, premises, or establishment where any bakery product is prepared, processed or manufactured for sale to the general public. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-21. Definition of "bakery product."** The words "bakery product" includes bread, rolls, cake, pies, cookies, and all similar goods used or intended to be used for human consumption. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-22. Condition of building which is used as a bakery.** Any building occupied or used as a bakery, wherein is carried on the business of production of bakery products, shall be clean, properly lighted, drained, and ventilated. Every such bakery shall be provided with adequate plumbing and drainage facilities including suitable wash sinks, toilets, and water closets which shall be kept at all times in good working condition. All toilets and water closets shall be separate and apart from the rooms in which bakery products are produced or handled. All wash sinks, toilets, and water closets shall be kept in a clean and sanitary condition, shall be reasonably free from visible dirt and filth and shall be in well-lighted and ventilated rooms. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-23. Floors, walls and ceilings of rooms where dough is mixed.** The floors, walls, and ceilings of the rooms in which the dough is mixed and handled or the pastry prepared for packing, or in which the bakery product or ingredients of such product are otherwise handled or stored shall be kept and maintained in a clean, wholesome, and sanitary condition. All openings into such rooms, including windows and doors, shall be kept properly screened or otherwise protected to exclude flies. No working rooms shall be used for any purpose other than those that are directly connected with the preparing, baking, storage, and handling of food and shall not be used as washing, sleeping, or living rooms and shall, at all times, be separated and closed from the living and sleeping rooms. Rooms shall be provided for the changing and hanging of wearing apparel apart and separate from the work rooms, and such rooms as are provided for the changing and hanging of wearing apparel shall be kept clean at all times. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-24. Duties of the personnel.** No employee or other person shall sit or lie upon any table, bench, trough, or shelf which is intended for the dough or bakery products. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-26. Cleanliness of personnel.** Before beginning the work of preparing, mixing, and handling the ingredients used in baking, every person engaged in the preparation or handling of bakery products shall wash his hands and arms thoroughly and for this purpose sufficient wash basins or sinks together with soap and clean towels shall be provided by the bakery. Every such person after using the toilet and before returning to the handling of bakery products shall wash his hands and arms thoroughly. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-27. Personnel wearing sufficient clothing while working in bakery.** Persons employed in bakeries must, while working, wear sufficient clothing, which clothing shall be clean and sanitary. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-28. Cleanliness of implements.** All tables, shelves, troughs, trays, receptacles, utensils, implements, and machinery used in preparing, mixing, or handling bakery products or the ingredients thereof must be thoroughly cleaned daily when in use and kept in a clean and sanitary condition. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-29. Cleanliness of receptacles transporting bakery goods.** Trucks, boxes, wagons, baskets and other receptacles in which bakery products are transported, stored, or held shall be kept in a clean and sanitary condition at all times and shall be free from dust, flies, and other contamination. All show cases, shelves, or other places where bakery products are sold or held shall be kept well covered, properly ventilated, well protected from dust and flies and other contamination and shall be kept in a clean and wholesome condition at all times. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-30. All waste material removed.** All refuse, dirt, and waste material subject to decomposition must be removed from the bakery daily. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-31. Material used in the production or preparation of bakery products.** All material used in the production or preparation of bakery products shall be stored, handled, and kept in a way to protect them from spoiling and contamination, and no material shall be used which is contaminated or which may render the

bakery products unwholesome or unfit for food. The ingredients used in the production of bakery products and the sale or offering for sale of bakery products shall comply with the provisions of the laws and regulations pertaining thereto against adulteration and misbranding. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-32. All bakery products to be properly wrapped.** No bakery shall permit the removal of any bakery product from a bakery unless such product shall be wrapped and sealed in clean, unused paper unprinted or printed on one side only or unless such product shall be placed in a bag which shall be sealed or closed in such a manner as to prevent the entry of dust or other form of substance, except that any such product may be delivered in a closed container to hotels, restaurants, institutions, and other bakeries and to bakery branches. Any such container as last referred to must be so constructed as to keep such product in a sanitary condition while in the process of delivery. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-34. No animal or fowl permitted in bakery.** No animal or fowl shall be kept or allowed in any bakery or other place where bread or other bakery products are produced, handled, or stored. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-35. The water supply.** The water supply of any bakery shall be ample, clean and potable. Every bakery shall make known to the inspector, and, whenever required, shall afford opportunity for inspection of the source of its water supply and the location and character of its reservoir and sewage tanks. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-36. Approval of the Kansas state board of health.** The foregoing specific rules and regulations pertaining to bakeries, etc., are in addition to the general rules and regulations adopted by the state board of health. In the event that there is any conflict between the above specific rules and regulations and the general rules and regulations adopted by the state board of health, the specific rules and regulations shall take precedence over the general rules and regulations. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

## Manufacture and Handling; Soda Water

**28-23-41 Soda water defined.** (a) Soda water is the class of beverages made by absorbing carbon dioxide in potable water. The amount of carbon dioxide used is not less than that which will be absorbed by the beverage at a pressure of one atmosphere and at a temperature of 60° F. It may contain buffering agents as provided in paragraph (b) (5) of this section. It either contains no alcohol or only such alcohol (not in excess of 0.5 percent by weight of the finished beverage) as is contributed by the flavoring ingredient used. Soda water designated by a name, including any proprietary name provided for in paragraph (c) of this section, which includes the word "cola" or a designation as a "pepper" beverage that, for years, has become well known as being made with kola nut extract and/or other natural caffeine-containing extracts, and thus as a caffeine-containing drink, shall contain caffeine in a quantity not to exceed 0.02 percent by weight.

(b) Soda water may contain optional ingredients, but if any such ingredient is a food additive or a color additive within the meaning of section 201(s) or (t) of the federal food, drug and cosmetic act, it is used only in conformity with a regulation established pursuant to section 409 or 706 of the act. The optional ingredients that may be used in soda water in such proportions as are reasonably required to accomplish their intended effects are:

(1) Nutritive sweeteners consisting of the dry or liquid form of sugar, invert sugar, dextrose, corn syrup, glucose syrup, sorbitol, or any combination of two or more of these.

(2) One or more of the following flavoring ingredients may be added, in a carrier consisting of ethyl alcohol, glycerin, or propylene glycol:

(i) Fruit juices (including concentrated fruit juices), natural flavoring derived from fruits, vegetables, bark, buds, roots, leaves and similar plant materials.

(ii) Artificial flavoring.

(3) Natural and artificial color additives.

(4) One or more of the acidifying agents acetic acid, adipic acid, citric acid, fumaric acid, lactic acid, malic acid, phosphoric acid, or tartaric acid.

(5) One or more of the buffering agents consisting of the acetate, bicarbonate, carbonate, chloride, citrate, lactate, orthophosphate, or sulfate salts of calcium, magnesium, potassium, or sodium.

(6) (i) One or more of the emulsifying, stabilizing, or viscosity-producing agents brominated vegetable oils, carob bean gum (locust bean gum), glycerol ester of wood rosin, guar gum, gum acacia, gum tragacanth, hydroxylated lecithin, lecithin, methyl-cellulose, mono- and diglycerides of fat-forming fatty acids, pectin, polyglycerol esters of fatty acids, propylene glycol alginate, sodium alginate, sodium carboxymethylcellulose, sodium metaphosphate (sodium hexametaphosphate).

(ii) When one or more of the optional ingredients in subdivision (i) of this subparagraph are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5 percent by weight of such ingredients.

(7) One or more of the foaming agents ammoniated glycyrrhizin, gum ghatti, licorice or glycyrrhiza, yucca (Joshua-tree), yucca (Mohave), quillaia (soapbark) Quillaja saponaria Molina.

(8) Caffeine, in an amount not to exceed 0.02 percent by weight of the finished beverage.

(9) Quinine in an amount not to exceed 83 parts per million by weight of the finished beverage.

(10) One or more of the chemical preservatives ascorbic acid, benzoic acid, BHA, BHT, calcium disodium EDTA, erythorbic acid, glucose-oxidase-catalase enzyme, methylparaben or propylparaben, propyl gallate, potassium or sodium benzoate, potassium or sodium bisulfite, potassium or sodium metabisulfite, potassium or sodium sorbate, sorbic acid, sulfur dioxide or tocopherols; and in the case of canned soda water, stannous chloride in a quantity not to exceed 11 parts per million calculated as tin (Sn), with or without one or more of the other chemical preservatives listed in this subparagraph.

(11) The defoaming agent dimethylpolysiloxane in an amount not to exceed 10 parts per million.

(c) (1) The name of the beverage for which a definition and standard of identity is established by this section, which is neither flavored nor sweetened, is soda water, club soda or plain soda.

(2) The name of each beverage containing flavoring and sweetening ingredients as provided for in paragraph (b) of this section is ". . . soda" or ". . . soda water" or ". . . carbonated beverage," the blank being filled in with the word or words that designate the characterizing flavor of the soda water; for example, "grape soda."

(3) If the soda water is one generally designated by a particular common name; for example, ginger ale, root beer, or sparkling water, that name may be used in lieu of the name prescribed in subparagraphs (1) and (2) of this paragraph. For the purposes of this section, a proprietary name that is commonly used by the public as the designation of a particular kind of soda water may be used in lieu of the name prescribed in subparagraphs (1) and (2) of this paragraph.

(d) Soda water that contains the optional ingredient caffeine as provided for in paragraph (b) (8) of this section, artificial flavoring, artificial coloring, or any combination of these shall be labeled to show that fact by the label statement "with . . ." or ". . . added," the blank being filled in with the word or words "caffeine," "artificial flavoring," "artificial coloring," or a combination of these words, as appropriate. If the soda water contains one or more of the optional ingredients set forth in paragraph (b) (10) of this section, which has or is intended to have a preservative effect in the finished beverage, it shall be labeled to show that fact by one of the following statements: ". . . added as a preservative" or "preserved with . . .," the blank being filled in

with the common name of the preservative ingredient. If soda water contains quinine salts, the label shall bear a prominent declaration either by use of the word "quinine" in the name of the article or by separate declaration.

(e) The label statements prescribed in paragraph (d) of this section for declaring the optional ingredients present shall appear on the labeling surface of the beverage in such a manner as to render the statement likely to be read by the ordinary individual under customary conditions of purchase or use of such beverage. These statements shall immediately and conspicuously precede or follow the name of the beverage, wherever such name is prominently displayed, without intervening, written, printed or graphic matter:

Provided, that, where such name is part of a trademark or brand, then other written, printed or graphic matter that is also a part of such trademark or brand may intervene if the label statements required by this section are so placed as to be conspicuously related to the name of the beverage. (Authorized by K.S.A. 65-663, K.S.A. 1968 Supp. 65-673; effective Jan. 1, 1969.)

**28-23-42. "Building" defined.** The term "building" as used in these rules and regulations shall mean the entire building, together with the premises. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-43. Buildings in which "soda water beverages" are manufactured.** All buildings in which "soda water beverages" are manufactured shall be well lighted and ventilated; all floors, walls, ceilings, tables, benches, shelves and other fixtures, shall be maintained in such condition that they may readily be made clean and sanitary; all floors shall be watertight and shall have sufficient pitch to insure drainage. Floors may be constructed of wood, cement or tile or brick laid in cement, or any other material impermeable to water. Ceilings and walls or other overhead coverings shall be dust proof. Walls and ceilings and parts thereof shall be kept well painted, varnished or otherwise finished so that they may easily be cleaned. Walls, ceilings, doors, windows, window ledges and all other places where dirt or dust may accumulate, shall be kept cleaned at all times. All floors, fixtures, utensils, or other apparatus used in manufacture, handling, storing or sale of "soda water beverages" shall be kept clean and sanitary at all times. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-44. Premises of building.** There shall be no conditions in or around or connected to building or upon the premises which will render it difficult or impossible to keep the building clean and sanitary. No cesspool or other nuisances of any kind shall be in the building or located on the premises in such a way as to affect the sanitary condition of building. No horses, cows or other animals shall be kept or stabled within 25 feet of building. All openings, such as windows, doors, etc., shall be well screened for the purpose of excluding flies and other insects. The building shall be equipped with wash basins or sinks of sufficient size and shall be located so as to be easily accessible to all employees. Clean, individual towels shall be provided at all times. Adequate toilets shall be provided in connection with building. In cities having sewage systems, all sinks, wash basins, toilets and other drains shall be connected with said sewage system. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-45. Factory equipped with adequate and efficient machinery for washing of bottles.** Every factory engaged in the manufacture of "soda water beverages" shall be equipped with adequate and efficient machinery, appliances and devices for the proper washing of all bottles and other containers in which "soda water beverages" are placed for purpose of sale. Such appliances shall include a soaker, the necessary brushes, rinsing tanks and force sprays. All soakers and such other appliances used in the cleaning of bottles and other containers must be of type approved by the chief food and drug inspector, or any of his representatives. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-46. Factory equipped with room known as a sirup and extract room.** Every factory shall be equipped with a room known as a sirup and extract room, in which all sirups and extracts used shall be mixed or compounded. Such sirup and extract room shall be separated from other rooms of the factory. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-47. Bottles thoroughly cleaned.** All bottles and other containers used for "soda water beverages" shall be thoroughly cleaned and sterilized before being filled; unless the bottles or other containers are used immediately after washing and sterilizing, they shall not be used. The process of cleaning shall include the soaking of such bottles or other containers in an alkali solution at a temperature of not less than 125 degrees Fahrenheit for not less than ten minutes, or for such length of time as approved by the chief food and drug inspector or his representatives. Such solution shall contain at least three percent of alkali determined as sodium hydroxide (NaOH). The alkali in such solution shall be replaced when it becomes unclean. After soaking in alkali, all bottles or other containers must be thoroughly brushed on the inside and cleaned on the outside with a brush or other suitable means, after which they must be thoroughly rinsed in clean, running water or by means of a strong spray of water under pressure. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-48. Crowns and stoppers protected from filth.** All crowns or stoppers shall be so stored that they will be protected from filth, dust or other contamination, and shall be clean at the time of using. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-49. The cleanliness of containers.** All sirup containers, conveyors, percolators and other products used in the manufacture of ``soda water beverages" shall be kept covered and in a clean, sanitary condition at all times and all such containers, sirup lines, and siruping machines shall be flushed out with a sterilizing solution at least once a day while in daily use or on such days as they may be in use. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-50. Water used for the manufacture of ``soda water beverages."** All water used for the manufacture of ``soda water beverages" shall be pure and free from pollution and contamination. Samples of water supply must be submitted when demanded by the chief food and drug inspector or any of his representatives. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-51. All wells and springs supplying water.** All wells and springs supplying water shall be properly covered and protected so as to prevent surface contamination. All water used for the preparation of ``soda water beverages" shall be properly filtered. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-52. Cleanliness of materials used.** All material used shall be pure and free from adulteration. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-53. The use of saccharin.** The use of saccharin is prohibited. The use of salicylic acid is prohibited. The use of benzoate of soda in quantities up to one-tenth of one percent is permissible, if so stated on the label. No coal-tar color, other than certified colors shall be used. Only harmless vegetable color is allowed to be used. All mineral acids other than phosphoric acid are prohibited. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-54. The use of label on any package.** The use in a label on any package enclosing any carbonated or uncarbonated beverage drink which contains artificial fruit flavors or artificial fruit essences of any design representing fruit, or any design, writing, expression, or device, which indicates or suggests that the contents of any such package consists wholly or in part of any natural fruit juices, is hereby prohibited. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-55. Cleanliness of personnel.** All persons engaged in the handling, preparing or manufacture of ``soda water beverages" shall be required to be clean in their work and shall wear clean garments. No person suffering from any communicable disease shall be employed in or about factories where ``soda water beverages" are manufactured and bottled. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

## Frozen Food Locker Plants

**28-23-70. Frozen food locker plant defined.** For the purposes of these regulations a frozen food locker plant shall mean any plant which provides locker, cabinets, boxes, baskets or other receptacles kept constantly under freezing temperatures for the storage of food products. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-71. Means for cleansing and sterilizing tools and equipment.** Every frozen food locker plant shall be provided with adequate means for washing and sterilizing tools and other equipment. An adequate supply of safe water shall be provided and if hot running water is not available, means of heating shall be provided. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-73. Toilet and handwashing facilities.** Each plant shall be provided with adequate sanitary toilets and proper hand-washing facilities. Every person handling food products in the plant shall be required to wash his hands after use of the toilets. Clean individual towels shall be provided. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-75. Inspection by plant operator.** All food products shall be subject to the inspection of the plant operator. Any meat products showing obvious sign of disease or decomposition shall be rejected for storage. Any vegetable or fruit products showing obvious signs of decomposition or infestation with insects shall be rejected for storage. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-78. Products to be frozen before storage.** All food products shall be completely frozen before storage in lockers. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-79. Place for processing.** All processing shall be done in an enclosed or semi enclosed place, used only for the purpose of processing foods and not open to persons not engaged in the processing of foods for storage. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**28-23-80. Temperature requirements.** ..The refrigeration system for a locker plant shall be equipped with accurate and reliable controls for the automatic maintenance of uniform temperatures: *Provided*, this shall not apply to locker plants having constant temperature supervision. .Temperatures shall be maintained in the respective rooms as follows:

(a) *Chill and/or aging room.* Temperatures of thirty-seven (37) degrees F. or lower with a tolerance of ten (10) degrees for a reasonable time after fresh food is placed in the chill room.

(b) *Sharp-freeze room--sharp-freeze compartments.* Temperatures of ten (10) degrees below zero F. or lower in rooms where still air cooling is employed and temperatures of zero (0) degrees or lower in rooms where forced air circulation is employed, with a tolerance of ten (10) degrees for either type of installation for a reasonable time after putting fresh food into the freezer.

(c) *Locker room.* Temperatures of zero (0) degrees F. or lower. The chill room, sharp-freeze room and locker room shall be equipped with accurate, direct reading thermometers or be equipped with a temperature indicator. (Authorized by K.S.A. 1965 Supp. 65-626; effective Jan. 1, 1966.)

**Food Service Establishments, Food Vending Machines Companies  
and Lodging Establishments  
Article 36**

**Application and License Fees**

**28-36-30 Fees.** (a) (1) Except as specified in paragraph (2) of this subsection, the food service establishment annual license fee shall be \$200.

(2) The annual license fee shall be \$130 for the following types of food service establishments:

(A) Those that serve the elderly at senior satellite sites with no on-site food preparation; and

(B) those that serve children at school satellite sites with no on-site food preparation.

(b) The food service establishment license application fee shall be \$200. (Authorized by and implementing K.S.A. 2002 Supp. 36-503; effective, E-79-16, July 1, 1978; effective May 1, 1979; amended, E-82-21, Nov. 16, 1981; amended May 1, 1982; amended Dec. 30, 1991; amended Sept. 27, 1993; amended Nov. 20, 1998; amended, T-28-7-2-01, July 2, 2001; amended Nov. 9, 2001; amended Oct. 24, 2003.)

**28-36-31. Lodging establishment application fees.** The application fee for all lodging establishments doing business in Kansas shall be based on the number of rooms as follows:

1 room to 9 rooms                   =     \$30

10 rooms to 29 rooms           =     \$50

30 rooms or more                =     \$100

(Authorized by K.S.A. 1978 Supp. 36-502; effective, E-79-16, July 1, 1978; effective May 1, 1979.)

**28-36-33. Definitions.** Definitions adopted pursuant to K.A.R. 28-36-20, shall be applicable to lodging establishments. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-34. Walk ways and driving surfaces.** Walk ways and driving surfaces shall be constructed to pose no walking or driving hazards. Walking and driving surfaces shall be constructed to facilitate drainage and eliminate standing water. This regulation shall not conflict with applicable local codes having requirements equally stringent. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-35. Floors, walls, and ceilings.** Floors in public areas, guest rooms other than toilet areas, may be covered with carpet that is maintained clean and in good repair. Junctures between floors and walls in guest rooms and public areas shall be covered or finished with mopboards or otherwise constructed to be easily cleanable. Walls and ceilings shall be clean and maintained in good repair. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-36. Furnishings.** Furniture in guest rooms and public use areas shall be clean, constructed so as to be easily cleanable, and maintained in safe condition. Linens used by guests shall not be used as dusting or wiping cloths on furniture, walls, equipment attached thereto, vanities, lavatories, or toilet fixtures. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-37. Lighting.** Exterior walking surfaces and corridors routinely used or used in the event of emergency by guests of the facility shall be provided with at least ten (10) foot candles of light. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-38. Cleaning, sanitization, and storage of drinking glasses.** (a) Drinking glasses provided for use by guests may be of single service or multiuse construction. When drinking glasses are used which are constructed for single service use only, they shall be used only once and then discarded in a manner that prohibits reuse. When drinking glasses are used which are constructed for multiple use, they shall, prior to being distributed to guest rooms or other areas for use, be washed, rinsed, and sanitized. Washing of drinking glasses in guest rooms shall be prohibited. (1) Manual washing, rinsing, and sanitizing of drinking glasses shall be conducted in a sink with at least three (3) compartments supplied with hot and cold potable running water. Manual washing, rinsing, and sanitizing shall be conducted in the following sequence:

(A) Sinks shall be cleaned prior to use.

(B) Drinking glasses shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.

(C) Drinking glasses shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(D) Drinking glasses shall be sanitized in the third compartment according to one of the following methods:

(i) Immersion for at least one-half (1/2) minute in clean hot water at a temperature of at least one hundred seventy degrees Fahrenheit (170° F); or

(ii) Immersion for at least one (1) minute in a clean solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite and at a temperature of at least seventy-five degrees Fahrenheit (75° F); or

(iii) Immersion for at least one (1) minute in a clean solution containing at least twelve and five tenths (12.5) parts per million of available iodine and having a pH not higher than five (5.0), and at a temperature of at least seventy-five degrees Fahrenheit (75° F); or

(iv) Immersion in a clean solution containing any other chemical sanitizing agent allowed by the regulatory authority that will provide the equivalent bacterial effect of a solution containing at least fifty (50) parts per million of available chlorine as a hypochlorite at a temperature of at least seventy-five degrees Fahrenheit (75° F) for one (1) minute.

(2) When hot water is used for sanitizing, the following facilities shall be provided and used;

(A) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least one hundred seventy degrees Fahrenheit (170° F); and

(B) A numerically scaled indicating thermometer accurate to plus or minus three degrees Fahrenheit ( $\pm 3^\circ$  F), convenient to the sink for frequent checks of water temperature; and

(C) Dish baskets of such size and design to permit complete immersion of the drinking glasses in the hot water.

(3) When chemicals are used for sanitization, they shall not have concentrations higher than the maximum permitted by these regulations and a test kit or other device that accurately measures the parts per million concentration of the solution shall be provided and used.

(4) Cleaning and sanitizing of drinking glasses may be done by spray type or immersion dishwashing machines or by any other type of machine or device if it is demonstrated that it thoroughly cleans and sanitizes drinking glasses. Mechanical cleaning and sanitizing shall be conducted in accordance with K.A.R. 28-36-24(4).

(5) After sanitization, all drinking glasses shall be air dried.

(6) Drain boards or easily movable dish tables shall be provided for proper handling of soiled drinking glasses prior to washing and for cleaned drinking glasses following sanitizing.

(7) Cleaned and sanitized drinking glasses shall be handled in a way that protects them from contamination. Drinking glasses shall be handled without contact with the inside surfaces or surfaces that contact the user's mouth.

(b) Glasses may be washed, rinsed, and sanitized using the equipment of a licensed food service establishment operated in connection with the lodging establishment.

(c) *Storage.*

(1) Cleaned and sanitized drinking glasses shall be stored at least six (6) inches above the floor in a clean, dry location in a way that protects them from contamination by splash, dust, and other means. Drinking glasses shall not be placed under exposed sewer lines or water lines except for automatic fire protection sprinkler heads that may be required by law.

(2) Drinking glasses shall be stored inverted.

(3) Drinking glasses shall be stored in guest rooms in a way that protects them from contamination.

(4) Single service drinking glasses shall be stored at least six (6) inches above the floor in closed cartons or containers which protect them from contamination and shall not be placed under exposed sewer lines or water lines except for automatic fire protection sprinkler heads that may be required by law.

(5) Single service drinking glasses shall be handled and dispensed in a manner that prevents contamination of surfaces which may come in contact with food or with the mouth of the user.

(6) The storage of single service or multi-use drinking glasses in toilet rooms or vestibules is prohibited.

(d) Ice buckets or containers used for the dispensing of ice shall comply with all requirements established for drinking glasses pertaining to washing, rinsing, sanitizing, storage, reuse, and protection from contamination. The reuse of unprotected styro-foam ice containers is prohibited. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-39. Ice dispensing.** (a) In all new, newly constructed or extensively remodeled facilities ice dispensing equipment shall be constructed or located to prevent the direct accessibility to bulk ice storage compartments by guests or the public. This requirement shall be met by the use of automatic ice dispensing machines, prepackaged ice, containers of ice provided by employees from ice sources inaccessible to guests or the general public, or by any other method approved by the regulatory authority. In existing lodging establishments



all replacement ice making equipment shall be of such design construction or location to prevent accessibility to bulk ice storage compartments by guests or the public. Ice not manufactured on the premises shall be obtained from an approved source and manufactured from potable water.

(b) Ice bins shall be cleaned at least monthly or more often if necessary. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-40, Toilet rooms and vestibules.** (a) In all new, newly constructed or extensively remodeled lodging facilities separate and complete toilet facilities shall be provided for each individual lodging unit.

(b) *Toilet room floors.*

(1) Floors in toilet rooms shall be constructed of smooth, nonabsorbent, easily cleanable materials and maintained in good repair.

(2) Junctures between toilet room floors and walls shall be provided with coving to facilitate cleaning.

(3) Carpeting is prohibited in toilet rooms.

(4) Carpeting may be permitted in vestibules if kept cleaned and maintained in good condition.

(c) *Toilet room fixtures.*

(1) Toilet room fixtures shall be of sanitary design and maintained in good repair.

(2) Floors of bathtubs and showers shall be designed or provided with non-slip surfaces.

(3) Lavatories shall be provided with hot and cold potable running water under pressure by means of a mixing valve or combination faucet. The temperature of hot water supplied to any guest room shall not exceed one hundred thirty degrees Fahrenheit (130° F).

(d) *Toilet room walls and ceilings.* Walls including those in showers and bathtub enclosures shall be smooth, nonabsorbent and easily cleanable. Walls and ceilings shall be maintained in good repair.

(e) In all new, newly constructed or extensively remodeled lodging facilities toilet rooms shall be mechanically vented to the outside, or by an approved re-circulating and filtering system. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-41. Insect and rodent control.** (a) Effective measures to minimize the presence of rodents, flies, cockroaches and other insects on the premises shall be utilized. The premises shall be kept in such condition as to prevent the harborage or feeding of insects or rodents.

(b) Openings to the outside shall be effectively protected against the entrance of rodents. Outside openings shall be protected against the entrance of insects or rodents by tight fitting doors, closed windows, screening, or other means. Screens for windows, doors, skylights, intake and exhaust air ducts, and other openings to the outside shall be tight fitting and free of breaks. Screening materials shall not be less than sixteen (16) mesh to the inch. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-42. Housekeeping facilities and equipment.** (a) *Service carts.* Maid's carts or service carts shall be maintained to prevent cross contamination between soiled and clean linens. Provisions shall be provided to protect drinking glasses and ice buckets from contamination by soiled linens, cleaning and sanitizing agents, poisonous and toxic materials, or other sources of contamination.

(b) *Janitor's facilities.*

(1) A specific area or location shall be provided for the storage and maintenance of cleaning supplies and equipment.

(2) Cleaning supplies and equipment shall not be stored with clean linens, food, or food utensils.

(3) Cleaning supplies and equipment shall be stored in a manner preventing cross contamination of cleaned linens. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-43 Laundry facilities.** (a) A laundry shall be provided unless commercial laundry facilities are used.

(1) Laundry for the facility done commercially either entirely or in part shall have:

(A) adequate space for sorting and storing soiled linens;

(B) Storage space located to preclude cross contamination of clean linens;

(C) Storage space located to facilitate convenient pickup and delivery.

(2) Laundry done in the lodging establishment either entirely or partially shall:

(A) Be located in areas that are not used by guests or the public, and not used as corridors or passageways;

(B) Be arranged so as to provide for the physical or functional separation of clean and dirty areas;

(C) Laundry rooms shall be kept clean and free from accumulated lint and dust;

(D) Laundry rooms shall not be used for storage of equipment or supplies not related to the laundering process.

(b) Laundry carts or maid's carts shall not permit cross contamination between soiled and clean linens. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-44 Plumbing and electrical wiring.** (a) *Plumbing.* In all new, newly constructed or extensively remodeled lodging establishments, plumbing shall be installed and maintained in accordance with applicable local plumbing codes. In the absence of local plumbing codes, plumbing shall be installed and maintained in

accordance with the latest edition of the uniform plumbing code. In all lodging establishments constructed and licensed prior to enforcement of this regulation all plumbing shall be installed and maintained to prevent backflow, backsiphonage and cross connections from occurring. All plumbing systems shall be maintained to prevent leakage or seepage from either water supply or sewage disposal systems.

(b) **Electrical wiring.** In all new, newly constructed or extensively remodeled lodging establishments, electrical wiring shall be installed in accordance with applicable local codes. In the absence of such local codes, electrical wiring shall be installed in accordance with the latest edition of the national electrical code. In facilities constructed and licensed prior to effective date of this regulation electrical wiring systems shall be maintained to present no hazard. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-45 Personnel.** (a) The outer clothing of all employees shall be clean. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods in the lodging establishment.

(b) All personnel known to be infected with a disease in a communicable form or having communicable skin lesions shall be restricted from work until well. (Authorized by K.S.A. 1978 Supp. 36-506; effective May 1, 1979.)

**28-36-46 Water supply.** Sufficient potable water to meet the needs of any lodging establishment shall be provided from a source constructed and operated according to K.S.A. 65-163. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983.)

**28-36-47 Sewage.** All sewage generated by any lodging establishment shall be disposed of by a public sewer system or by a sewage disposal system constructed and operated according to K.S.A. 65-164 *et seq.* Nonwater carried sewage disposal facilities shall be permitted only as approved by the regulatory authority in response to emergency occurrences. (Authorized by and implementing K.S.A. 36-506; effective May 1, 1983.)

**28-36-48 Bedding.** Clean bed linens, unused by any other person since the last laundering, shall be furnished on all beds available for use by any guest or patron. Beds, mattresses, bed coverings and pillows shall be kept clean, free from dust, dirt and vermin. No bedding shall be used which is badly worn or unfit for further use. (Authorized by and implementing K.S.A. 36-507; effective May 1, 1983.)

**28-36-49 Soap and towels.** Soap and clean towels and wash cloths, unused by any other person since the last laundering, shall be furnished daily to each guest. (Authorized by and implementing K.S.A. 36-507; effective May 1, 1983.)

**28-36-101 Definitions.** Chapter one of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions:

(a) "Federal food, drug, and cosmetic act" shall be replaced by "Kansas food, drug, and cosmetic act."

(b) "FDA" means "food and drug administration."

(c) The definition of "food additive" in subpart 1-201.10(B)(2)(a) shall be deleted and shall be replaced by the definition in K.S.A. 65-656(s), and amendments thereto.

(d) The definition of "color additive" in subpart 1-201.10(B)(2)(b) shall be deleted and shall be replaced by the definition in K.S.A. 65-656(t), and amendments thereto.

(e) The definition of "adulterated" in subpart 1-201.10(B)(3) shall be deleted and shall be replaced by the definition of "food deemed adulterated" in K.S.A. 65-664, and amendments thereto.

(f) In subpart 1-201.10(B)(23), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(g) The definition of "food" in subpart 1-201.10(B)(27) shall be deleted and shall be replaced by the definition in K.S.A. 36-501(f), and amendments thereto.

(h)(1) In subpart 1-201.10(B)(31)(b)(i), the word "and" shall be deleted.

(2) In subpart 1-201.10(B)(31)(b)(ii), the period after "FOOD" shall be deleted and shall be replaced by a semicolon.

(3) In subpart 1-201.10(B)(31)(b), the following paragraphs shall be added:

(iii) A "food service establishment" as defined in K.S.A. 36-501(e), and amendments thereto;

(iv) A "vending machine" defined in K.S.A. 36-501(g), and amendments thereto; and

(v) A "retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens that offer prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged non-potentially hazardous foods, roadside markets that offer only fresh fruits and fresh vegetables for sale, food service establishments, or food and beverage vending machines."

(i) In subpart 1-201.10(B)(33)(a), "bison," shall be added after the word "horse," and in (33)(b) "bison," shall be deleted after the word "buffalo."

(j) In subpart 1-201.10(B)(51), the word "Permit" shall be deleted and shall be replaced by "License."

(k) In subpart 1-201.10(B)(52), the words "Permit holder" shall be deleted and shall be replaced by "Licensee."

(l) The definition of "person" in subpart 1-201.10(B)(53) shall be deleted and shall be replaced by the definition in K.S.A. 36-501(j), and amendments thereto.

(m) The definition of "person in charge" in subpart 1-201.10(B)(54) shall be deleted and shall be replaced by the following: "means at the time of the inspection, any individual or employee present in a food establishment who is responsible for the operation. If no designated individual or employee is the person in charge, then any employee present is the person in charge."

(n) In subpart 1-201.10(B)(63)(a) and (b), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(o) The definition of "public water supply" in subpart 1-201.10(B)(65) shall be deleted and shall be replaced by the definition of "public water supply system" in K.S.A. 65-162a(b), and amendments thereto.

(p) The definition of "refuse" in subpart 1-201.10(B)(68) shall be deleted and shall be replaced by the definition of "solid waste" as defined in K.S.A. 65-3402, and amendments thereto.

(q) The definition of "regulatory authority" in subpart 1-201.10(B)(69) shall be deleted and shall be replaced by the following: "means the secretary of health and environment or the secretary's designated agent."

(r) The definition of "sewage" in subpart 1-201.10(B)(76) shall be deleted and shall be replaced by the definition in K.S.A. 65-164(b), and amendments thereto.

(s) The definition of "vending machine" in subpart 1-201.10(B)(91) shall be deleted and shall be replaced by the definition of "food vending machine" in K.S.A. 36-501(g), and amendments thereto.

(t) In subpart 1-201.10(92), "Food" shall be inserted before the word "Vending." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-102 Management and personnel.** Chapter two of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions and substitutions:

(a) In subpart 2-101.11, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(b) In subpart 2-102.11, the words "OR APPROVED" shall be inserted after "ACCREDITED."

(c) In subpart 2-201.11, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(d) In subpart 2-201.12(D)(1) and (D)(2), the number "7" shall be replaced by "14."

(e) In subpart 2-201.12(D)(2)(a), the words "until 2 weeks after the onset of symptoms" shall be inserted before "or." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-103 Food.** Chapter three of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following deletions and substitutions:

(a) In subpart 3-201.11(E), the words "without a CONSUMER advisory as specified in ¶ 3-401.11(C)" shall be deleted.

(b) In subpart 3-305.13, "FOOD" shall be inserted before the word "VENDING."

(c) In subpart 3-306.12(B), "FOOD" shall be inserted before the word "VENDING."

(d) In subpart 3-401.11(D)(3)(a), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(e) In subpart 3-501.16(C)(2), the phrase "5 years" shall be deleted and shall be replaced by "10 years."

(f) In subpart 3-602.11(B)(5), the words "Federal Food, Drug, and Cosmetic Act § 403 (Q)(3)(5)" shall be deleted and shall be replaced by "Kansas food, drug, and cosmetic act."

(g) Subpart 3-603.11 shall be deleted. (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-104 Equipment, utensils, and linens.** Chapter four of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions:

(a)(1) In subpart 4-204.14, "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.14, "FOOD" shall be inserted before the word "VENDING."

(b) In subpart 4-204.16, the words "for human consumption" shall be added to the end of the first sentence.

(c)(1) In subpart 4-204.19, "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.19, "FOOD" shall be inserted before the word "VENDING."

(d) In subpart 4-204.110(B)(1), the words "as specified under § 8-103.11" shall be deleted and shall be replaced by "by the regulatory authority."

(e)(1) In subpart 4-204.111, "Food" shall be inserted before the word "Vending" in the title.

(2) In subpart 4-204.111(B)(1) and (2), "FOOD" shall be inserted before the word "VENDING."

- (f)(1) In subpart 4-204.121, "Food" shall be inserted before the word "Vending" in the title.
- (2) In subpart 4-204.121(A) and (B), "FOOD" shall be inserted before the word "VENDING."
- (g)(1) In subpart 4-204.123, "Food" shall be inserted before the word "Vending" in the title.
- (2) In subpart 4-204.123(A) and (B), "FOOD" shall be inserted before the word "VENDING."
- (h) Subparts 4-301.12(C)(5), (C)(6), (D), and (E) shall be deleted.
- (i) In subpart 4-401.11(B), the words "that are in unwrapped packages" shall be added after the word "ARTICLES."
- (j) In subpart 4-501.114(D), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (k)(1) In subpart 4-603.16(A)(1), the word "or" shall be added at the end of the paragraph.
- (2) Subpart 4-603.16(A)(2) shall be deleted, and the designation for paragraph "(A)(3)" shall be replaced by "(A)(2)."
- (3) In subpart 4-603.16, paragraph (B)(1) shall be deleted, and the designation for paragraph "(B)(2)" shall be deleted.
- (4) Subpart 4-603.16(C) shall be deleted.
- (5) In subpart 4-603.16, the designation of "(D)" shall be replaced by "(C)."
- (6) In subpart 4-603.16, the designation of "(E)" shall be replaced by "(D)."
- (l)(1) In subpart 4-703.11(C)(1), the number "10" shall be replaced by "60."
- (2) In subpart 4-703.11(C)(2), the number "7" shall be replaced by "60." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-105 Water, plumbing, and waste.** Chapter five of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions:

- (a)(1) In subpart 5-101.11(A), "SUPPLY" shall be inserted before the word "SYSTEM."
- (2) In subpart 5-101.11(B), the words "according to LAW" shall be deleted and shall be replaced with "according to K.S.A. 65-161 et seq., and amendments thereto."
- (b) In subpart 5-102.11(B), "SUPPLY" shall be inserted before the word "SYSTEM."
- (c) In subpart 5-102.13, "SUPPLY" shall be inserted before the word "SYSTEM."
- (d) In subpart 5-102.14, "SUPPLY" shall be inserted before the word "SYSTEM."
- (e) In subpart 5-103.12, the symbol "\*" shall be added after the subtitle "Pressure."
- (f) In subpart 5-104.11(B), the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 65-161 et seq., and amendments thereto."
- (g) In subparts 5-201.11(A) and 5-202.11(A), the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 65-161 et seq., and amendments thereto."
- (h)(1) In subpart 5-203.11(A), the phrase "and (C)" shall be deleted.
- (2) Subpart 5-203.11(C) shall be deleted.
- (i)(1) In subpart 5-203.12, the words "and Urinals" in the subtitle shall be deleted.
- (2) In subpart 5-203.12, the two sentences shall be deleted and shall be replaced by the following: "Toilet facilities shall be installed according to applicable state and local requirements or as approved by the regulatory authority. Toilet facilities shall be conveniently located and shall be accessible to employees and patrons at all times, except that food service establishments that have no seating arrangements shall not be required to provide patron access to toilet facilities. Separate toilet facilities shall be provided for each sex in all new, newly constructed, or extensively remodeled facilities that offer food consumption arrangement for 20 or more persons on the premises."
- (j) In subparts 5-402.13, 5-403.11(B), and 5-403.12, the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 65-161 et seq., and amendments thereto."
- (k)(1) In subpart 5-501.14, "Food" shall be inserted before the word "Vending" in the title.
- (2) In subpart 5-501.14, "FOOD" shall be inserted before the word "VENDING."
- (l) In subpart 5-502.12(A) and (B), the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 65-161 et seq., and amendments thereto."
- (m) In subpart 5-503.11, the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 65-161 et seq., and amendments thereto." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-106 Physical facilities.** Chapter six of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference.

- (a) In subpart 6-302.10, the words "and urinals" shall be deleted.
- (b) In subpart 6-404.11, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-107 Poisonous or toxic materials.** Chapter seven of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference. (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)

**28-36-108 Compliance and enforcement.** Chapter eight of the 1999 "food code," published by the U.S. department of health and human services, is adopted by reference, subject to the following additions, deletions, and substitutions:

- (a) In subpart 8-102.10(B), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (b) In subpart 8-103.12, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (c)(1) In the first sentence of subpart 8-201.11, the word "PERMIT" shall be deleted and replaced by "LICENSE," and the phrase "PERMIT HOLDER" shall be deleted and replaced by "LICENSEE."
- (2) In subpart 8-201.11(B), the word "or" shall be deleted.
- (3) In subpart 8-201.11(C), the words "as specified under ¶ 8-301.14(C)" shall be deleted, and "; or" shall replace the period after "Code."
- (4) In subpart 8-201.11, the following new paragraph shall be added after paragraph (C):  
"(D) Approval of plans by the regulatory authority shall not negate the liability of the applicant to comply with the requirements of these regulations."
- (d)(1) In subpart 8-201.13(A), the word "PERMIT" shall be replaced by "LICENSE."
- (2) In subpart 8-201.13(A), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (3) In subpart 8-201.13(A)(1), the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 36-501 et seq., and amendments thereto."
- (4) In subpart 8-201.13(B), the word "PERMIT" shall be deleted and shall be replaced by "LICENSE," and the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (e) Subparts 8-203.10, 8-301.11, 8-302.11, 8-302.12, 8-302.13, 8-302.14, 8-303.20, 8-303.30, 8-304.10, 8-304.20, and 8-401.10 shall be deleted.
- (f)(1) In subpart 8-304.11, the words "Permit Holder" shall be deleted and shall be replaced by "Licensee" in the title.
- (2) In subpart 8-304.11, the word "PERMIT" shall be deleted and shall be replaced by "LICENSE."
- (3) In subpart 8-304.11, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (4) In subpart 8-304.11(A), the word "PERMIT" shall be deleted and shall be replaced by "LICENSE."
- (5) In subpart 8-304.11(F), "as specified under § 8-402.11" shall be deleted.
- (6) In subpart 8-304.11(H), the phrase "5 years" shall be replaced by "10 years."
- (7) In subpart 8-304.11(I), the words "PERMIT HOLDER'S" shall be deleted and shall be replaced by "LICENSEE'S."
- (8) In subpart 8-304.11(J), the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 36-501 et seq., and amendments thereto."
- (g) In subpart 8-401.20, the words "Within the parameters specified in § 8-401.10" shall be deleted.
- (h) Subparts 8-402.11, 8-402.20, 8-402.30, 8-402.40, and 8-403.10 shall be deleted.
- (i)(1) In subpart 8-403.30, the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 36-501 et seq., and Amendments thereto."
- (2) In subpart 8-403.30, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (j) In subpart 8-403.40(A)(2), the words "PERMIT HOLDER'S" shall be deleted and shall be replaced by "LICENSEE'S."
- (k) Subpart 8-403.50 shall be deleted.
- (l) In subpart 8-404.11(A) and (B), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (m) Subpart 8-404.12 shall be deleted.
- (n)(1) In subpart 8-405.11(A) and (B), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (2) In subpart 8-405.11(B), the word "calendar" shall be deleted.
- (o) In subpart 8-405.20(B), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (p) In subpart 8-406.11(A) and (B), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."
- (q) Subpart 8-501.10 shall be deleted.
- (r)(1) In subpart 8-501.20, the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(2) In subpart 8-501.20, paragraph (C) shall be deleted and shall be replaced by the following: "(C) Immediate closing of the food establishment, until the regulatory authority determines that no further danger of disease transmission exists."

(s)(1) In subpart 8-501.30, in the first sentence the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(2) In subpart 8-501.30(B) and (C), the words "PERMIT HOLDER" shall be deleted and shall be replaced by "LICENSEE."

(t) In subpart 8-501.40, the words "according to LAW" shall be deleted and shall be replaced by "according to K.S.A. 36-501 et seq., and amendments thereto." (Authorized by K.S.A. 36-507 and 65-673; implementing K.S.A. 36-503, 36-508, 36-515, and 36-515a; effective Aug. 13, 1999.)